IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 34

GEORGE WHITAKER, A. M. DeBRUHL, T. G. EMBLER, ET AL, Appellants

vs.

STATE OF NORTH CAROLINA

BRIEF OF APPELLEE, STATE OF NORTH CAROLINA ON APPEAL FROM THE SUPREME COURT OF NORTH CAROLINA

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OPINION BELOW

The opinion of the Supreme Court of North Carolina in this case is printed in full beginning on page 57 of the Record in No. 34. It is also reported as follows: STATE v. WHITAKER, ET AL, 228 N. C., 352; 45 S. E. (2d) 860.

JURISDICTION OF THE COURT

The appellants, acting under Section 237(a) of the Judicial Code as amended (28 U.S.C.A. 344(a)), have invoked the jurisdiction of this Court. The validity of a

statute of North Carolina is involved upon the contention that it violates the Constitution of the United States. The Supreme Court of North Carolina sustained the validity of the statute. Appellee filed statement opposing jurisdiction and motion to dismiss or affirm (Filed under No. 660, October Term, 1947). On March 29, 1948, this Court entered an order noting probable jurisdiction. (R. 88; No. 34).

STATUTE IN QUESTION

The appellants were convicted in a criminal action in which they were charged with a violation of Sections 2, 3 and 5 of Chapter 328 of the Session Laws of 1947 (Article 10 of Chapter 95 of the General Statutes of North Carolina). The statute, including its caption, is here quoted in full:

> "An Act to protect the right to work and to declare the public policy of North Carolina with respect to membership or non-membership in labor organizations as affecting the right to work; to make unlawful and to prohibit contracts or combinations which require membership in labor unions, organizations or associations as a condition of employment; to provide that membership in or payment of money to any labor organization or association shall not be necessary for employment or for continuation of employment and to authorize suits for damages.
>
> "The General Assembly of North Carolina do enact:
>
> "Section 1. The right to live includes the right to work. The exercise of the right to work must be protected and maintained free from undue restraints and coercion. It is hereby declared to be the public policy of North Carolina that the right of persons to work shall not be denied or abridged on account of member-

ship or non-membership in any labor union or labor organization or association.

"Sec. 2. Any agreement or combination between any employer and any labor union or labor organization whereby persons not members of such union or organization shall be denied the right to work for said employer or whereby such membership is made a condition of employment or continuation of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is hereby declared to be against the public policy and an illegal combination or conspiracy in restraint of trade or commerce in the State of North Carolina.

"Sec. 3. No person shall be required by an employer to become or remain a member of any labor union or labor organization as a condition of employment or continuation of employment by such employer.

"Sec. 4. No person shall be required by an employer to abstain or refrain from membership in any labor union or labor organization as a condition of employment or continuation of employment.

"Sec. 5. No employer shall require any person, as a condition of employment or continuation of employment to pay any dues, fees, or other charges of any kind to any labor union or labor organization.

"Sec. 6. Any person who may be denied employment or be deprived of continuation of his employment in violation of Sections 3, 4 and 5, or of one or more of such Sections, shall be entitled to recover from such employer and from any other person, firm, corporation, or association acting in concert with him by appropriate action in the courts of this State such

damages as he may have sustained by reason of such denial or deprivation of employment.

"Sec. 7. The provisions of this Act shall not apply to any lawful contract in force on the effective date hereof but they shall apply in all respects to contracts entered into thereafter and to any renewal or extension of any existing contract.

"Sec. 8. If any clause, sentence, paragraph or part of this Act or the application thereof to any person or circumstance, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act, and the application thereof to other person or circumstances, but shall be confined to the part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstance involved.

"Sec. 9. All laws and clauses of laws in conflict with this Act are hereby repealed.

"Sec. 10. This Act shall be in full force and effect from and after its ratification."

ARRANGEMENT OF BRIEF

Appellee's argument will be formulated around and based upon the following points:

I. The right-to-work statute is neither an invasion of the right to form and maintain a trade union, nor an invasion of the freedoms of speech and assembly as guaranteed by the First and Fourteenth Amendments.

A. The clear and present danger test is not applicable.

B. The right-to-work statute need only meet the test of reasonableness.

II. Employment contracts are subject to the police power.

A. The right-to-work statute is a valid exercise of the police power.

III. The right-to-work statute has a real and reasonable relation to the public welfare.

A. It prevents a monopolization of the labor market.

B. It prevents trade union abuses directly and indirectly caused by the closed shop.

IV. The statute does not violate the equal protection clause of the Fourteenth Amendment.

STATEMENT OF THE CASE

Appellants, other than Whitaker, are officers and agents of unions affiliated with the American Federation of Labor and Asheville Building and Construction Trades Council. Appellant, Whitaker, is and has been a building contractor for many years. After the passage of the above-quoted statute, appellant, Whitaker, entered into a contract with the unions composing the Trades Council containing a closed shop clause, and giving the unions the right to fix all wages as well as hours and conditions of work. Appellants, other than Whitaker, signed the contract as officers and agents of various unions. (See Contract No. 34; R. 10).

Appellants were convicted in the Police Court of the City of Asheville and appealed to the Superior Court of Buncombe County. Appellants were tried in the Superior Court before a jury and upon the charges contained in the warrant. (No. 34; R. 2). In apt time, appellants filed motions to quash and in arrest of judgment, (No. 34; R. 4, 6), for the purpose of attacking the constitutionality of the above statute, and procedurally, such questions are pro-

perly raised according to North Carolina practice. Appellants were convicted by the jury and each fined $50.00 and his pro rata part of the costs (No. 34; R. 7) and appealed to the Supreme Court of North Carolina.

It was not denied that the closed shop agreement had been executed by appellants; and so far as evidence is concerned, appellants have violated the above statute if it is valid. Appellant, Whitaker, the President of the North Carolina Federation of Labor, and other officers of unions, testified in behalf of appellants, and without objection, gave opinions and conclusions as to the values to be derived from closed shop agreements. (No. 34; R. 12, 14, 16, 21).

The Supreme Court of North Carolina affirmed the judgment of the Superior Court (No. 34; R. 57; 228 N. C. 352; 45 S. E. (2d) 860) and decided all federal questions adversely to appellants' contentions.

ARGUMENT

I

THE STATUTE DOES NOT VIOLATE THE FIRST AMENDMENT AS ITS PRINCIPLES ARE INCORPORATED IN THE FOURTEENTH AMENDMENT, NOR DOES IT INVADE ANY RIGHT TO ORGANIZE AND MAINTAIN A TRADE UNION.

Appellants contend that the North Carolina statute (Chapter 328, Session Laws of 1947) restrains and impairs the exercise of the civil rights of assembly and speech as guaranteed and safeguarded under the First Amendment, and also safeguarded against state action by the due process of law clause of the Fourteenth Amendment (WEST VIRGINIA v. BARNETTE, 319 U. S. 624, 63 S. Ct. 1178).

It is said in substance: The liberties protected by the Fourteenth Amendment, including therein the First Amendment, not only include the rights of workmen to assemble at union meetings and peacefully disseminate ideas by speech and press but also the economic activities of workmen carried on through a union. It is said that these guarantees "extend to the activities of workmen in forming and protecting their labor organizations,"; and, therefore, as a consequence, a union and its agents cannot be prohibited from the activity of entering into a closed shop contract with an employer. As a result, therefore, of the application of the doctrine of union security, contract rights which are "not fundamental in nature," and are a "lesser species of right," are transmuted and transformed into rights equivalent to freedom of assembly and speech and are thereby to be accorded the favored position of fundamental personal rights. Thus, an economic right or activity is changed into a personal right.

This position of appellants carried to its logical conclusion would mean that any acts or activities of a labor union could claim the First Amendment, as applied in the Fourteenth Amendment, as a shield for anything done in the furtherance of union security or to further the bargaining power of the union as a means of obtaining an increased share of the fruits of economic endeavor. It could just as well justify the assassination of a business manager or employer active in the field of organizing business interests against union labor. In a certain sense and by a chain of causation, all human conduct and activities are the consequence of and are traceable to conferences, assemblies, exchange of speech and dissemination of ideas. It is only where the fundamental rights of assembly and speech are

so interconnected and compounded with economic activity that, in the protection of the fundamental liberties, the furtherance of certain economic activities incidental to these liberties is likewise protected. Appellants quote from THOMAS v. COLLINS, 323 U. S. 516, 531, 65 S. Ct. 315, as follows: "The idea is not sound, therefore, that the First Amendment's safeguards are wholly inapplicable to business and economic activity." This Court, however, was careful to explain what was meant by this quotation was that the assembling and discussions of working men as to the advantages and disadvantages of unions was protected as a part of assembly and free speech, irrespective of the fact that the discussions were based on the advantages of unions and the benefits that unions secured for their members. In this connection, the Court said:

> "That the State has power to regulate labor unions with a view to protecting the public interest is, as the Texas court said, hardly to be doubted. They cannot claim special immunity from regulation. Such regulation however, whether aimed at fraud or other abuses, must not trespass upon the domains set apart for free speech and free assembly. This Court has recognized that 'in the circumstances of our times the dissemination of information concerning the facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the Constitution . . . Free discussion concerning the conditions in industry and the causes of labor disputes appears to us indispensable to the effective and intelligent use of the processes of popular government to shape the destiny of modern industrial society.' Thornhill v. Alabama, 310 US 88, 102, 103, 84 L ed 1093, 1102, 1103, 60 S Ct 736; Senn v. Tile Layers Protective Union, 301 US 468, 478, 81 L ed 1229, 1236, 57 S Ct 857. The right thus to discuss, and inform people concerning, the advantages

and disadvantages of unions and joining them is protected not only as part of free speech, but as part of free assembly. Hague v. Committee for Industrial Organization, 307 US 496, 83 L ed 1423, 59 S Ct 954. The Texas court, in its disposition of the cause, did not give sufficient weight to this consideration, more particularly by its failure to take account of the blanketing effect of the prohibition's present application upon public discussion and also of the bearing of the clear and present danger test in these circumstances."

The same argument that the appellants here make as to the breadth of application of the First Amendment was made on the employer side in the case of ASSOCIATED PRESS v. UNITED STATES, 326 U. S. 1, 65 S. Ct. 1416, where the Associated Press, upon an indictment for a violation of the Sherman Anti-Trust Act, contended that the relationship of its members was protected by freedom of speech and freedom of the press. In disposing of this argument, this Court said:

"The fact that the publisher handles news while others handle food does not, as we shall later point out, afford the publisher a peculiar constitutional sanctuary in which he can with impunity violate laws regulating his business practices.

"Nor is a publisher who engages in business practices made unlawful by the Sherman Act entitled to a partial immunity by reason of the 'clear and present danger' doctrine which courts have used to protect freedom to speak, to print, and to worship. That doctrine, as related to this case, provides protection for utterances themselves, so that the printed or spoken word may not be the subject of previous restraint or punishment, unless their expression creates a clear and present danger of bringing about a substantial

> evil which the government has power to prohibit. Bridges v. California, 314 US 252, 261, 86 L ed 192, 202, 62 S Ct 190. Formulated as it was to protect liberty of thought and of expression, it would degrade the clear and present danger doctrine to fashion from it a shield for business publishers who engage in business practices condemned by the Sherman Act. Consequently, we hold that publishers, like all others charged with violating the Sherman Act, are subject to the provisions of the summary judgment statute."

This part of appellants' argument is evidently derived from an article written by Mr. Joseph P. Witherspoon, Jr., published in Volume 26 of the Texas Law Review, beginning on page 47. The writer in this article discusses the possible approaches that this Court might take in considering the so-called anti closed shop legislation of the states. He suggests that if the restriction or deprivation complained of as to the closed shop statutes could be considered as restricting or depriving workmen and labor unions of a personal right as opposed to an economic right, then persons attacking such a statute would have the benefit of the "clear and present danger test," and there would, therefore, be no presumption of constitutionality; and the proponents of the measure or statute would be compelled to assume a burden of showing a clear and present danger in order to justify state action. Apparently, Mr. Witherspoon, himself, does not have too much confidence in this contention for he says, on page 59 of the article: "It would be difficult, however, for the Court to classify the contract-making privilege of workers as 'personal,' for contract rights have been treated by the Court as 'economic' in nature. If, however, such right is really 'economic', then an unchanged right-classification device would require the

application of the 'test of reasonableness' with its pitfalls for the challenger under the burden of proof."

In support of their contention, appellants cite four decisions of the United States Supreme Court. Those decisions are: HAGUE v. C. I. O., 307 U. S. 496; THORNHILL v. ALABAMA, 310 U. S. 88, 60 S. Ct. 736; W. VA. v. BARNETT, 319 U. S. 624, 63 S. Ct. 1178 and THOMAS v. COLLINS, 323 U. S. 516, 65 S. Ct. 315. The general tenor of these holdings is to establish the principle that the right to assemble and function through labor organizations is a concomitant of the civil rights of assembly and speech as guaranteed by the above-mentioned constitutional provisions. However, neither the facts nor principles of those cases are applicable to the case at bar.

In the HAGUE case, *supra*, the C. I. O. union complained that a Jersey City ordinance (which forbade the leasing of any hall without a permit from the Chief of Police for a public meeting at which the speaker would advocate the obstruction, overthrow, or change of government by other than lawful means) was being used to prevent the union from discussing rights afforded to workers by the National Labor Relations Act. And that another ordinance (forbidding the public distribution of printed matter) prevented the union from informing workers of their rights by circulars. The Court held that such use of these ordinances infringed the privileges and immunities of citizens concerned as "the right peaceably to assemble and to discuss these topics and to communicate respecting them, whether orally or in writing, is a privilege inherent in citizenship of the United States which the (Fourteenth) Amendment protects."

The THORNHILL case, *supra*, was concerned with the

use of an Alabama anti-picketing statute when used to prohibit peaceful picketing. The Court held that "The danger of breach of the peace or serious invasion of rights of property or privacy at the scene of a labor dispute is not sufficiently imminent in all cases to warrant the legislature * * * (passing such a law)", and that "The freedom of speech and of the press guaranteed by the Constitution embraces at least the liberty to discuss publicly * * * all matters of public concern without previous restraint or fear of subsequent punishment."

The BARNETTE case, *supra*, dealt with a resolution adopted by the West Virginia Board of Education requiring that a salute to the flag be a regular part of the activities of their public schools and that refusal to comply therewith be grounds for suspension. Certain children subscribing to the faith of Jehovah's Witnesses refused to salute as being against the dictates of their faith in that the salute represented to them placing an image of man above the laws of God. The Court held that expulsion from school for such refusal invaded the sphere of the intellect and spirit which it is the purpose of the First and Fourteenth Amendments of the Constitution to reserve from all official control.

THOMAS v. COLLINS, *supra*, dealt with a Texas statute which required an out-of-state union speaker to secure an organizer's card from state officials before being allowed to speak and solicit union memberships. The Court reaffirmed the power of the state to regulate labor unions with a view to protecting public interest but held that freedom of speech and assembly cannot be restricted unless required to save the public from a clear and present danger.

Clearly, none of these cases have any applicability to the present controversy. As pointed out in the opinion of the

Supreme Court of North Carolina, the statute does not, in any manner, impair, prevent or restrict the right of either side, or any faction of either side, to a labor controversy to assemble, to speak, and to publicize its own ideas. As was further pointed out, the North Carolina statute protects the rights of employees to organize, and protects their individual opinions by allowing them to refuse to join a union. In the words of Associate Justice Seawell, speaking for the Court:

> "On the contrary, it seems to us that Chapter 328 may serve to secure the rights of free speech and assembly to all persons concerned. The statute protects the rights of workmen to organize; it further protects rights of workmen to express their individual opinions by refusing to join unions. The right of either side, or any faction of any side, to a labor controversy to assemble and publicize its own ideas remains inviolate." STATE v. WHITAKER, 228 N. C. 352, 368.

The Nebraska Court, in a well reasoned opinion sustaining the validity of the Nebraska right-to-work law, said:

> "We cannot by any construction conclude that it violates the First Amendment by abridging freedom of speech, or the press, or the right of assembly, or the right of petition to the government for redress. As a matter of fact, it preserves to all employees the right to organize and join a union and the right to bargain collectively without fear of reprisal. Instead of preventing or abridging rights of speech, press, assembly, or petition, guaranteed by the First Amendment, the amendment preserves it for all employees, not only to those who join but also to those who do not join a union. Therefore, the amendment does not abridge the privileges or immunities of any citizen of the

United States in violation of the Fourteenth Amendment, but affirmatively protects those rights." LINCOLN FEDERAL LABOR UNION v. NORTHWESTERN IRON AND METAL CO., 149 Neb. 507, 520.

The Arizona Court likewise, in sustaining that State's right-to-work law, said:

"Nothing in the amendment here under consideration either prevents, restricts, or even attempts to regulate the freedom of men to speak, assemble, or think. The amendment goes solely to prohibiting certain types of employment contracts or policies which the voters of Arizona believe work an injustice to non-members of labor organizations and so mitigate against the public welfare." A. F. of L. v. AMERICAN SASH AND DOOR CO., ... Arizona, ...

The Three-Judge Federal Court, in holding valid the Florida right-to-work statute, made this statement:

"The wording of the Florida Constitutional amendment is difficult, but it definitely does not violate the First Amendment by abridging freedom of speech or of the press or of the right of assembly, or the right of petition to the Government for redress. The assaulted amendment undertakes to preserve to employees, in full vigor, the right of collective bargaining. Instead of preventing or abridging the rights of speech, press, assembly, and petition, the amendment seeks to preserve it to those who do not join a labor union as well as to those who do. This amendment has no similarity to anti-picketing statutes or statutes which require the payment of a license by a labor organizer. The amendment is not in violation of the First Amendment to the Federal Constitution. The same is true of the allegations as to its violation of the Fourteenth

Amendment. There is no prohibition against a citizen belonging to any union that he chooses, but the prohibition seems to be against requiring membership in the union in order for a citizen to be eligible for work. Under statutes of the United States, such as Section 102, Title 29, U.S.C.A., a citizen is declared to be free to join a union or not, and one of the purposes of that statute, as well as the National Labor Relations Act, was to accord to employees full freedom to belong, or not to belong, to a union. The Florida constitutional amendment prohibits no one from joining a union but undertakes to declare that it shall not be a condition precedent to the right to work. It does not deny the labor union member the equal protection of the law, but appears to be designed to give to the non-union worker a protection of law which he had not theretofore enjoyed." AMERICAN FEDERATION OF LABOR v. WATSON, 60 Fed. Supp. 1010, reversed on other grounds in 327 U. S. 582.

The cases involving the dissemination of ideas or information about the merits of labor disputes while engaged in picketing do not support appellants' contentions.

We cite some of the more important cases as follows:

Thornhill v. Alabama, 310 U. S. 88, 60 S. Ct. 736

A. F. of L. v. Swing, 312 U. S. 321, 61 S. Ct. 568.

Carpenters Union v. Ritter's Cafe, 315 U. S. 722, 62 S. Ct. 807

Carlson v. California, 310 U. S. 106, 60 S. Ct. 746

It is apparent from a reading of these cases that the picketing was but an incident or background of the circumstances in which the dissemination of ideas on freedom of speech was taking place. The labor dispute was but the occasion of the exercise of freedom of expression. This is

pointed out by the Court in CARPENTERS UNION v. RITTER'S CAFE, *supra*, where the Court said:

> "The constitutional right to communicate peaceably to the public the facts of a legitimate dispute is not lost merely because a labor dispute is involved. THORNHILL v. ALABAMA, 310 U. S. 88, or because the communication takes the form of picketing, even when the communication does not concern a dispute between an employer and those directly employed by him. AMERICAN FEDERATION OF LABOR v. SWING, 312 U. S. 321."

Likewise, in the case of A. F. of L. v. SWING, *supra*, this Court said:

> "A state cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him. The interdependence of economic interest of all engaged in the same industry has become a commonplace. AMERICAN STEEL FOUNDRIES v. TRI-CITY COUNCIL, 257 U. S. 184, 209. The right of free communication cannot therefore be mutilated by denying it to workers, in a dispute with an employer, even though they are not in his employ. Communication by such employees of the facts of a dispute, deemed by them to be relevant to their interests, can no more be barred because of concern for the economic interests against which they are seeking to enlist public opinion than could the utterance protected in THORNHILL'S case. 'Members of a union might, without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution.' SENN v. TILE LAYERS UNION, 301 U. S. 468, 478."

In THORNHILL v. ALABAMA, *supra*, on this same point, this Court said:

> "The range of activities proscribed by § 3448, whether characterized as picketing or loitering or otherwise, embraces nearly every practicable, effective means whereby those interested — including the employees directly affected — may enlighten the public on the nature and causes of a labor dispute. The safeguarding of these means is essential to the securing of an informed and educated public opinion with respect to a matter which is of public concern. It may be that effective exercise of the means of advancing public knowledge may persuade some of those reached to refrain from entering into advantageous relations with the business establishment which is the scene of the dispute. Every expression of opinion on matters that are important has the potentiality of inducing action in the interests of one rather than another group in society. But the group in power at any moment may not impose penal sanctions on peaceful and truthful discussion of matters of public interest merely on a showing that others may thereby be persuaded to take action inconsistent with its interests. Abridgment of the liberty of such discussion can be justified only where the clear danger of substantive evils arises under circumstances affording no opportunity to test the merits of ideas by competition for acceptance in the market of public opinion."

It will be seen, therefore, that the protection of ideas afforded by the First Amendment, as applied in principle in the Fourteenth Amendment, was a dominant concern of the Court and not the particular economic activity, union activity or setting in which the dissemination of ideas occurred. It was not the protection of picketing *per se* that was the subject of constitutional protection, but it was

because picketing was a vehicle or technique necessary to the workers for the effective dissemination of information to the public or to other workers that brought about the application of the Amendment just as it would be of no avail to have the abstract right of freedom of the press and then make it unlawful for an individual to own and operate a printing press. There is, therefore, no rational connection between freedom of speech and assembly or the right to enter into a contract for a closed shop. The chain of connection and causation is too remote, and the contract right itself is of a different classification and protected on a different constitutional theory. Appellants, therefore, cannot clothe themselves in raiments of free speech and assembly for the purpose of seeking the shield of the First Amendment when it has no application to the right in question.

THE CLOSED SHOP IS NOT "INDISPENSABLE" TO ORGANIZATION AND SUCCESSFUL OPERATION OF LABOR UNIONS. THE NORTH CAROLINA STATUTE PROTECTS VOLUNTARY UNIONISM.

In their brief, appellants discuss the rise and development of the labor movement in the United States and the early practices resembling the closed shop, and this continuity of practice is urged upon the Court by way of sanction or approval similar to the adverse possession or rights of prescription. It is said that the right to be a slave is the cornerstone of the right-to-work statutes and their legislative policy. It is further said that this State has now returned to the days of 1840 in its labor outlook; and the charge, as laid in the North Carolina warrant, is substantially similar to the charge made in the case of COMMONWEALTH v. HUNT, 4 Metc. 111 (Mass.). Cases are also

cited from which it is said that legal approval has been given to the closed-shop method. The evolution of the labor movement is commented upon, and it is said, in substance, that a single employee is helpless in dealing with an employer and that the State of North Carolina has again resorted to the attitude that "it seems quite natural for the employer to fix the conditions of employment to which all persons seeking employment with him must submit."

Appellants' analogy wherein the closed shop is compared to the ancient practices of the Crafts and Gilds of the Middle Ages is not exactly sound. These institutions were engaged in production for use and in last analysis were associations of persons who wished to become proprietors or entrepreneurs in their own right. This is explained in the book entitled: "Development of Economic Society," by Modlin and de Vyver (D. C. Heath & Company, Boston, 1946). On this subject, these authors say:

> "In no sense did the gild resemble a modern trade union. Though it was a union of all members of a particular trade, this included journeymen, apprentices, and also the masters, who were enterprisers and employers as well as craftsmen. The modern trade union does not accept the employer as a member. The inclusion of the entire group in the medieval gild was made possible because there was at that time no class of permanent wage earners in the modern sense of the term. In those days a man expected to be a journeyman only for a few years until he could save the small amount needed to establish himself as a master, or, possibly by marrying his master's daughter, to become a partner in his business."

This argument, by way of ancient lineage, even if exact, by no means proves that custom or institution arising

under the provincial economy of feudal days should be allowed to continue and prevail when it disturbs a public welfare which is supported by an intricate and interdependent economic structure. Manifestly, the closed shop must be examined in terms of the present power of unions and not in terms of the political and economic life of former generations. We do not desire to return to the days of the past in our outlook upon labor with its well-known labor spy and strike breaker and many other employer abuses. The fact that the capitalistic system or structure of economy, in its development from feudal days to the present time, has committed many sins or practiced many abuses does not authorize labor unions to travel the same road. We no longer have one man against an employer, but what we have today is one man against one union. Unions are no longer mere associations of workingmen and small private groups. This is shown by Slichter in his book on the "Challenge of Industrial Relations". On page 14 of his discussion, he says:

> "Unions have tremendous power. No longer do they cover a small fraction of the work force. About seven million jobs in American industry may be held only by men who are union members or whom unions are willing to accept as members. About eleven million employees who work in union shops or closed shops or under maintenance-of-membership clauses hold their jobs only so long as they keep in good standing in their unions. No longer are most unions underdogs. The strongest unions, as I have pointed out, are the most powerful economic organizations which the country has ever seen. One cannot conceive of the railroads, even if they were not bound by law to render continuous service, daring to cut off the country from railroad service. Steel producers would not dare com-

> bine for the purpose of depriving the country of steel; no combination of coal operators would dare cut off the supply of coal Yet in each of these industries during the last year unions have not hesitated to stop production in order to enforce their demands—in some cases, very trivial demands."

The individual workingman is now up against the problem of the closed union with its discriminations (Volume 56, Yale Law Journal, pp. 731-737), with dictatorial union discipline enforced by vague rules and indefinite charges for the purpose of expulsion, with union legislation adopted by a far away national executive committee, and in many cases, with no disinterested appellate bodies to review the judgments of this private government. (See "Democracy in Trade Unions, American Civil Liberties Union;" See also "Union Policies in Industrial Management" by Slichter, the Brookings Institution, Washington, D. C., 1941.)

Judicial approval, of course, has been divided; and it will do no good to array legal authorities one against the other.

Appellants say that the right of labor to organize and bargain collectively is a constitutionally-protected right, and the right of assembly and free speech extends to any action that a trade union may take so long as such action is necessary and indispensable for the maintenance of the trade union. Thus the right to assemble and discuss objectives freely draws within the orbit of protection afforded by the First Amendment any act or course of action previously agreed upon in an assembly. We, therefore, have the spectacle of collective action produced by an assembly, conferring rights that are not given to any business association or, in fact, to any other group in the nation. If appellants' contentions are sound, then the private rules

of a union previously agreed upon by its executive committee are far superior to the rules of action enacted by the constitutional political agency of a sovereign state. This same argument will, in turn, support and justify the use of a company union or indeed any act of violence, provided, always, it is decided in an assembly that it was necessary and indispensable to the maintenance of a trade union.

It is evident from appellants' argument that their goal is the all-inclusive union shop on a national basis. It is said that workingmen are born into an economic society and that this society is governed by the unions; that by virtue of collective action, unions, therefore, have the powers of government and are, therefore, to be exercised without any corelative responsibilities. There must be elimination of non-union wage differentials, both outside and inside any particular plant or industry; that this is necessary for equality of bargaining power and to protect a union organization. If all non-union wage differentials are gradually eliminated and if it is necessary and indispensable to have the closed shop to protect trade unions, it is hard to see how appellants can escape the position that a union-controlled monopoly of labor has become a constitutional right because, as they say, it is indispensable and necessary. It is true that appellants seek to qualify their position by using such phrases as "right of workers to take action not independently unlawful," and "in the absence of compelling public necessity." This, however, is only a way of evading the question since the legislative branch of the Government of the State of North Carolina has said that the means is "independently unlawful," and that there exists "compelling public necessity."

Appellants, in their brief, discuss at length the rise and evolution of the legal right of workingmen to combine to-

gether and organize trade unions. The existence and constitutional protection of this fundamental right is not denied by appellee. The North Carolina statute does not prohibit or under the guise of regulation destroy this right. The use of injunctions is not authorized. The statute says that an employer, as a condition of employment or continuation of employment, cannot: (a) require a person to become or remain a member of a labor union; (b) require a person to pay any dues, fees or charges to a labor union; (c) require a person to abstain or refrain from membership in any labor union; (d) that an agreement between an employer and a labor union: (1) denying the right to work to non-union men; or (2) requiring union membership as a condition of employment; or, (3) continuation of employment, or, (4) an agreement whereby a union acquires an employment monopoly in any enterprise; such agreement containing any of all of these elements shall constitute an illegal combination or conspiracy in restraint of trade or commerce in the State of North Carolina.

The statute does not deny freedom of speech and assembly; it does not deny the right to organize; it does not prohibit contracts between employers and employees as to wages, hours and working conditions in the form of union agreements or otherwise. There is no proscription of collective bargaining.

Appellants, by a strong and studied effort, try to create the impression that the right to organize, collective bargaining and the closed shop are all one and the same thing; and that modern unionism cannot exist without the necessitous and indispensable closed shop.

It is apparent that appellants' argument is based upon two assumptions: (1) unions are necessary to protect

workers, and (2) that the only way unions can continue to exist is by the use of the closed shop. We may grant the first assumption without in anywise granting the second. Certainly, whether or not the closed shop is necessary for union existence, it must be examined outside of this second assumption made by appellants. It cannot be disputed that the closed shop makes membership in a trade union necessary if the worker is to live and maintain his family. There might be some basis for this position if the State regulated union membership, such as, admission, dues, dismissals, and the like. The fact is, however, that trade unions insist that membership is like membership in a private club. They insist that they shall determine who shall belong, how much they shall pay and when and for what grounds a member may be dismissed. This puts into the hands of an unregulated private organization the complete control of the economic well-being of the people. We have no evidence that unions are endeavoring to establish democratic procedures in their internal organizations. They have no free press, no party system, no division of legislative and judicial and no real limitations on lengths of term of office for union leaders. There is, therefore, no protection for the minority in modern trade unionism.

Appellants' argument derived from certain Federal statutes is best disposed of by a quotation from the opinion of Mr. Justice Seawell in this case (STATE v. WHITAKER, *supra*):

> "The most comprehensive gains made by labor have unquestionably been made in the field of Federal legislation. It is neither possible nor necessary for us to do more than highlight those gains in this opinion. The Clayton Act in 1914 restricted the use of the injunction in labor disputes in an effort to correct an

almost universally recognized abuse of that judicial process. This marked the first major step taken by Congress in enacting rules beneficial to labor in its conflict with management. However, it fell far short of its purpose and the Norris-LaGuardia Act in 1932 further and more specifically restricted the use of the injunction in addition to prohibiting 'yellow dog contracts' and limiting the liability of union officials. In 1935 Congress enacted the National Labor Relations Act declaring the public policy of the United States to be the encouragement of collective bargaining and the protection of 'the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.' To safeguard those rights the Act prohibited five specified types of unfair employer practices. It further provided for the settlement of questions as to who are to represent employees, and it specifically preserved the right to strike. Among other provisions of the Act was the authorization of closed shop agreements with the specific limitation that nothing contained in the Act would permit such agreements in states under whose laws they were illegal.

"Perhaps it might be said with the passage of The National Labor Relations Act, 'the labor movement has come full circle.' Perhaps that statute only marked a temporary high point in the progress of labor which will some day be surpassed. We cannot know now, and our feelings in the matter have no bearings upon the case at hand. What is more important to a consideration of this case is that Congress contemporaneously with the adoption of Chapter 328, by the North Carolina General Assembly, determined that it had gone too far in licensing weapons which labor might use in obtaining its ends and that further re-

strictions thereon were necessary in the public interest. The Taft-Hartley Act, was primarily adopted for that purpose. The purpose and provisions of that statute, therefore, become highly important to a consideration of the contemporary conditions out of which Chapter 328 also emerged.

"Section 1 of the National Labor Relations Act has found, as a basis for that statute, that the national welfare had been adversely affected by several stated malpractices of management in its dealings with labor. Section 1, of the Taft-Hartley Act restated those findings on the basis of evidence considered by Congress, finding that both labor and management were guilty of acts in their relationship to each other which necessitated mutual regulation in the public interest. The industrial strife and disruption of the national economy which led to this finding of dual responsibility and blame are briefly summarized in the reports which accompanied the Senate and House Bills and the conference committee's report at the adoption of the Taft-Hartley Act of 1947.

"Section 7 of the Taft-Hartley Act prohibits the narrowly defined closed shop, and Section 8 (3) permits a union shop subject to certain conditions. Section 14 (b) supplements these sections by providing:

"'(b) Nothing in that Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial Law.'"

THE NORTH CAROLINA STATUTE DEALS ONLY WITH ECONOMIC AND NOT PERSONAL RIGHTS.

The appellants' contention, that the right-to-work statutes can be supported only by a showing of compelling

public necessity under the clear and present danger test, is fundamentally unsound, and its major premise false. In cases where state legislation amounts to a restriction or deprivation of an "economic" claim of right relating to the use of property or to the making of contracts, only the "test of reasonableness" need be met in order to give validity to the enactment. (This proposition is ably supported in appellants' own Economic Brief, Appendix E, quoting an article entitled STATE LEGISLATION BANNING UNION-SECURITY AGREEMENTS: THE DUE PROCESS ISSUE AND JUDICIAL SELF-RESTRAINT, written by Joseph P. Witherspoon, Jr., and appearing in the Texas Law Review, Vol. XXVI, for November, 1947, No. 1, page 47.) Where the "test of reasonableness" is applied to a challenged state statute, a presumption of constitutionality attaches to the statute. BORDEN'S FARM PRODUCTS CO. v. BALDWIN, 293 U. S. 194, 209, 55 S. Ct. 187. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it. MADDEN v. KENTUCKY, 309 U. S. 83, 88, 60 S. Ct. 406. As far as the proponents of the bill are concerned . . . "due process . . . demands only that the law shall not be unreasonable, arbitrary, or capricious, and that the means selected shall have a real and substantial relation to the object sought to be obtained." NEBBIA v. NEW YORK, 291 U. S. 502, 525, 54 S. Ct. 505.

It is only where the complained of restriction, or deprivation, is of a "personal" claim of right, such as freedom of the press and of speech, that the clear and present danger test is applied. THORNHILL v. ALABAMA, 310 U. S. 88, 60 S. Ct. 736; SCHENCK v. UNITED STATES, 249 U. S. 47, 39 S. Ct. 247; THOMAS v. COLLINS, 323 U. S. 516, 65 S. Ct. 315. The right-to-work statutes do not restrict or

prohibit any personal rights. The right to organize and maintain a union is not affected, nor is the right to strike and the right to picket. It is only the contract-making privilege of workers that is affected and the contract-making privilege is purely economic in nature. As was said in STAPLETON v. MITCHELL, 60 Fed. Supp. 51, 61:

> "As we have said, the process of self-organization, collective bargaining and all other allied union activities necessarily involve the rights of free speech, press and assembly which may not be conditioned by statute or previous restraint by injunctive process, but *we must also recognize that the sum and total of all union activities are directed toward economic objectives and necessarily involve purely commercial activities which may be regulated in the public interest on any reasonable basis.* In short, when used as an economic weapon in the field of industrial relations or as coercive technique, speech, press and assembly are subject to reasonable regulation in the public interest and in that respect the state is the primary judge of the need, and *it is not required to wait until the danger to the community which it seeks to avoid is 'clear and present.'*" (Emphasis supplied)

This Court recognized the economic, as opposed to the personal, aspect of labor organizations in U. S. v. WHITE, 322 U. S. 694, 64 S. Ct. 1248, where Mr. Justice Murphey, speaking for the Court, said:

> "Structurally and functionally, a labor union is an institution which involves more than the private or personal interests of its members. It represents organized, institutional activity as contrasted with wholly individual activity," and individuals while "acting as representatives of a collective group, cannot be said to be exercising their personal rights and duties and to be

> entitled to their purely personal privileges. Rather they assume the rights, duties and privileges of the artificial entity or association of which they are agents or officers and they are bound by its obligations."

It was also stated in AMERICAN FEDERATION OF LABOR v. WATSON, 60 Fed. Supp. 1010, 1016, that:

> "Collective bargaining, self-organization, and other kindred union activities necessarily involve the rights of free speech, freedom of the press, freedom of assembly, and freedom of petition, which may not be denied by state statute or constitution, but *we also must recognize that the total of union activity is directed toward economic objectives which involve purely commercial activities and which may be regulated by the state upon any reasonable basis when not in conflict with superior law.*" (Emphasis supplied)

For the appellant to assert that the right-to-work statutes infringe upon the constitutional right to organize, and the attendant rights to strike and to picket is an unwarranted conclusion. There is no attempt to prohibit joining a union, —the prohibition is against requiring membership in a union in order for a citizen to be eligible for work. Freedom of choice by the worker in regard to affiliation with a labor union has long been declared by the United States Congress to be one of the ends sought by its labor legislation. This is illustrated by the Norris-LaGuardia Act, and the National Labor Relations Act, among the purposes of which was to accord to employees full freedom to belong or not to belong to a labor union. See Norris-LaGuardia Act, 2, 29 U.S.C.A. 102; National Labor Relations Act 1, to 16, 29 U.S.C.A. 151 to 166. Also see Senate Report No. 105, 80th Congress, 1st Session, pp. 5, 6, 7. The right-to-work

statutes assailed by appellants are but expressions by the state legislature of the policy already sanctioned and approved by the Congress.

In attempting to support their contention that the clear and present danger test is the only one which can here be applied, the appellants again rely on the THOMAS, BARNETTE and THORNHILL cases which they previously cited in attempting to show that the right-to-work statute is an infringement on the right to organize. Those cases have already been distinguished from the case at bar. The same distinctions apply in this instance and their further elaboration is unnecessary. At this point, it would be appropriate to recall again that principle so succinctly stated in AMERICAN FEDERATION OF LABOR v. WATSON, *supra*:

> "Labor and labor unions are affected with the public interest and are subject to the regulatory power of the states *for any reasonable regulation which will not be inconsistent with the Constitution of the United States and statutes enacted within the scope delegated by the Constitution to the Congress.*" (Emphasis supplied)

II

EMPLOYMENT CONTRACTS ARE SUBJECT TO THE POLICE POWER, AND THE RIGHT TO WORK STATUTE IS A VALID EXERCISE OF THE POLICE POWER.

We propose to discuss now the only question stressed by appellants in the State Courts: Can the North Carolina statute be sustained as a reasonable and valid exercise of the police power?

In their brief, appellants say:

> "We do not say, nevertheless, that all contracts requiring union membership as a condition of employment are beyond the reach of state power. Interests there may be, both public and private, which might justify regulation of the circumstances under which such contracts may be made. Obligations to society and to private persons, may perhaps be imposed upon both labor organizations and employers who function under such agreements."

The THOMAS case, *supra*, so strongly relied on by the appellants, itself states that the State has power to regulate labor unions. "They cannot claim special immunity from regulation . . . . Espousal of the cause of labor is entitled to no higher constitutional protection than the espousal of any other lawful cause."

The police power has been defined by this Court as "an exercise of the sovereign right of government to protect the lives, health, morals, comfort and general welfare of the people.", HOME BUILDING AND LOAN ASSOCIATION v. BLAISDELL, 290 U. S. 398, 54 S. Ct. 231. The principle of the police power and its application is well set forth in the land-mark decision of NEBBIA v. NEW YORK, 291 U. S. 502, 54 S. Ct. 505. In the NEBBIA case, the question for decision was whether the New York statute fixing the minimum selling price for milk violated the due process and equal protection clauses of the Fourteenth Amendment of the Federal Constitution. This Court sustained the validity of the New York law, stating in part:

> "The Fifth Amendment, in the field of federal activity, and the Fourteenth, as respects State action, do not prohibit governmental regulation for the public wel-

fare. They merely condition the exertion of the admitted power, by securing that the end shall be accomplished by methods consistent with due process. And the guaranty of due process, as has often been held, demands only that *the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained.* * * * * So far as the requirement of due process is concerned, and in the absence of other constitutional restriction, a state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce that policy by legislation adapted to its purpose. The courts are without authority either to declare such policy, or, when it is declared by the legislature, to over-ride it. If the laws passed are seen to have a *reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory, the requirements of due process are satisfied*, and judicial determination to that effect renders a court functus officio. * * * * *With the wisdom of the policy adopted, with the adequacy or practicability of the law enacted to forward it, the courts are both incompetent and unauthorized to deal.* The course of decision in this court exhibits a firm adherence to these principles. Times without number we have said that *the legislature is primarily the judge of the necessity of such an enactment, that every possible presumption is in favor of its validity*, and that though the court may hold views inconsistent with the wisdom of the law, *it may not be annulled unless palpably in excess of legislative power.*" (Emphasis supplied.)

That the complaint of legislation might make inroads into the freedom of contract is not a bar to the valid exercise of the police power of the State. In the words of the

Court in CHICAGO B. & Q. R. CO. v. McGUIRE, 219 U. S. 566, 31 S. Ct. 259:

"But it was recognized in the cases cited, as in many others, that freedom of contract is a qualified, and not an absolute, right. There is no absolute freedom to do as one wills or to contract as one chooses. The guaranty of liberty does not withdraw from legislative supervision that wide department of activity which consists of the making of contracts, or deny to government the power to provide restrictive safeguards. Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community. Crowley v. Christensen, 137 U. S. 89, 34 L. ed. 621, 11 Sup. Ct. Rep. 13; Jacobson v. Massachusetts, 197 U. S. 11, 49 L. ed. 643, 25 Sup. Ct. Rep. 358, 3 A. & E. Ann. Cas. 765. . . . The right to make contracts . . . is subject, also, in the field of state action, to the essential authority of government to maintain peace and security, and to enact laws for the promotion of the health, safety, morals, and welfare of those subject to its jurisdiction. This limitation has had abundant illustration in a variety of circumstances. Thus, in addition to upholding the power of the state to require reasonable maximum charges for public service (Minn v. Illinois, 94 U. S. 113, 24 L. ed. 77; Chicago, B. & Q. R. Co. v. Iowa (Chicago, B. & Q. R. Co. v. Cutts) 94 U. S. 155, 24 L. ed. 94; Railroad Commission Cases, 116 U. S. 307, 29 L. ed. 636, 6 Sup. Ct. Rep. 334, 388, 1191; Willcox v. Consolidated Gas Co. 212 U. S. 19, 53 L. ed. 382, 29 Sup. Ct. Rep. 192, 15 A. & E. Ann. Cas. 1034), and to prescribe the hours of labor for those employed by the state or its municipalities (Atkin v. Kansas, 191 U. S. 207, 48 L. ed. 148, 24 Sup. Ct. Rep. 124), this court has sustained the validity of state legislation in prohibiting the manufacture and sale of intoxicating liquors within the state (Mugler v. Kansas, 123 U. S. 623, 31 L. ed.

205, 8 Sup. Ct. Rep. 273; Crowley v. Christenden, supra); in limiting employment in underground mines or workings, and in smelters and other institutions for the reduction or refining of ores or metals, to eight hours a day, except in cases of emergency (Holden v. Hardy, 169 U. S. 366, 42 L. ed. 780, 18 Sup. Ct. Rep. 383); in prohibiting the sale of cigarettes without license (Gundling v. Chicago, 177 U. S. 183, 44 L. ed. 725, 20 Sup. Ct. Rep. 633); in requiring the redemption in cash of store orders or other evidences of indebtedness issued in payment of wages (Knoxville Iron Co. v. Harbison, 183 U. S. 13, 46 L. ed. 55, 22 Sup. Ct. Rep. 1); in prohibiting contracts for options to sell or buy grain or other commodity at a future time (Booth v. Illinois, 184 U. S. 425, 46 L. ed. 623, 22 Sup. Ct. Rep. 425); in prohibiting the employment of women in laundries more than ten hours a day (Muller v. Oregon, 208 U. S. 412, 52 L. ed. 551, 28 Sup. Ct. Rep. 324, 13 A. & E. Ann. Cas. 957); and in making it unlawful to contract to pay miners employed at quantity rates upon the basis of screened coal, instead of the weight of the coal as originally produced in the mine (McLean v. Arkansas, 211 U. S. 539, 53 L. ed. 315, 29 Sup. Ct. Rep. 206)."

And as was said in FRISBIE v. U. S., 157 U. S. 160, 166, 15 S. Ct. 586, and repeated in the McGUIRE case, *supra*:

"While it may be conceded that, generally speaking, among the inalienable rights of the citizen is that of the liberty of contract, yet such liberty is not absolute and universal. It is within the undoubted power of government to restrain some individuals from all contracts, as well as all individuals from some contracts. It may deny to all the right to contract for the purchase or sale of lottery tickets; to the minor the right to assume any obligations, except for the necessaries of existence; to the common carrier the power to make

any contract releasing himself from negligence, and, indeed, *may restrain all engaged in any employment from any contract in the course of that employment which is against public policy. The possession of this power by government in no manner conflicts with the proposition that, generally speaking, every citizen has a right freely to contract for the price of his labor, services, or property.*" (Emphasis supplied)

That employment contracts and labor management relations are subject to the police power is well settled by the case of WEST COAST HOTEL CO. v. PARRISH, 300 U. S. 379, 57 S. Ct. 578. There this Court upheld, as a valid exercise of the police power, a law of the State of Washington which authorized the fixing of minimum wages for women. The Court specifically reaffirmed its holding in the NEBBIA case, quoting the same language from it that is set out above, as the test by which to judge the proper exercise of the police power. In elaborating on the police power of the State in regard to employer-employee contracts, the Court went on to say:

"This power under the Constitution to restrict freedom of contract has had many illustrations. That it may be exercised in the public interest with respect to contracts between employer and employee is undeniable. Thus statutes have been sustained limiting employment in underground mines and smelters to eight hours a day (Holden v. Hardy, 169 U. S. 366, 42 L. ed. 780, 18 S. Ct. 383); in requiring redemption in cash of store orders or other evidences of indebtedness issued in the payment of wages (Knoxville Iron Co. v. Harbison, 183 U. S. 13, 46 L. ed. 55, 22 S. Ct. 1); in forbidding the payment of seamen's wages in advance (Patterson v. The Eudora, 190 U. S. 169, 47 L. ed. 1002, 23 S. Ct. 821); in making it unlawful to con-

tract to pay miners employed at quantity rates upon the basis of screened coal instead of the weight of the coal as originally produced in the mine (McLean v. Arkansas, 211 U. S. 539, 53 L. ed. 315, 29 S. Ct. 206); in prohibiting contracts to employees (Chicago, B. & Q. R. Co. v. McGuire, 219 U. S. 549, 55 L. ed. 328, 31 S. Ct. 259, supra); in limiting hours of work of employees in manufacturing establishments (Bunting v. Oregon, 243 U. S. 426, 61 L. ed. 830, 37 S. Ct. 435, Anr. Cas. 1918A, 1043); and in maintaining workmen's compensation laws (New York C. R. Co. v. White, 243 U. S. 188, 61 L. ed. 667, 37 S. Ct. 247, L. R. A. 1917D, 1; Mountain Timber Co. v. Washington, 243 U. S. 219, 61 L. ed. 685, 37 S. Ct. 260, 13 N.C.C.A. 927, Ann. Cas. 1917D, 642). In dealing with the relation of employer and employed, the legislature has necessarily a wide field of discretion in order that there may be suitable protection of health and safety, and that peace and good order may be promoted through regulations designed to insure wholesome conditions of work and freedom from oppression. Chicago, B. & Q. R. Co. v. McGuire, supra (219 U. S. p. 570, 55 L. ed. 339, 31 S. Ct. 259)."

Statutes which forbid employers to blacklist former employees, or to seek to prevent their obtaining employment elsewhere are valid as a proper exercise of police power.

State v. Justus, 85 Minn. 279, 88 N. W. 759;
Johnson v. Oregon S. Co., 128 Ore. 121, 270 P. 772.

This State has had in effect statutes enacted in 1909 which prevent the blacklisting of employees or conspiring to blacklist them.

G. S. 14-355;
G. S. 14-356.

Likewise, statutes have been enacted by other states aimed to mitigate the economic and social consequences of unemployment.

Chamberlain, Inc. v. Andrews, 271 N. Y. 1, 2 N. E. (2d) 22. Affirmed: 299 U. S. 515, 57 S. Ct. 122.

Carmichael v. Southern C. & C. Co., 301 U. S. 495, 57 S. Ct. 868.

Statutes prohibiting interference with or intimidation of employees (PEO. v. WASHBURN, 285 Mich. 119, 280 N. W. 132, appeal denied; 305 U. S. 577, 59 S. Ct. 355) are within the police power of the State. And see the dissenting opinions in COPPAGE v. KANSAS, 236 U. S. 1, 35 S. Ct. 240, 248.

This position of the United States Supreme Court in regard to employer-employee contracts, as well as other relationships, was reaffirmed in NATIONAL LABOR RELATIONS BOARD v. JONES & LAUGHLIN STEEL CORPORATION, 301 U. S. 1, 57 S. Ct. 615, in which case the validity of the National Labor Relations Act was sustained; and again in U. S. v. DARBY, 312 U. S. 100, 61 S. Ct. 451, holding, on the authority of the PARRISH case, *supra*, that the Federal Fair Labor Standards Act is a constitutional enactment; and still again in PHELPS DODGE CORPORATION v. NATIONAL LABOR RELATIONS BOARD, 333 U. S. 177, 61 S. Ct. 845, where the Court upheld the provision of the National Labor Relations Act that it "shall be an unfair labor practice for an employer . . . by discrimination in regard to hire or tenure of employment or in term or condition of employment to encourage or discourage membership in any labor organization. Indeed the Court in that case went so far as to say:

> "The course of decisions in this Court since Adair v. U. S., 208 U. S. 161, and Coppage v. Kansas, 236 U. S. 1, have completely sapped those cases of their authority."

PRESUMPTION AS TO NECESSARY SUPPORTING CIRCUMSTANCES AND JUDICIAL VIEWPOINT.

It is well settled that an Act of the Legislature is presumably valid. BROWN v. MARYLAND, 25 U. S. 419, 6 L. ed. 678. As pointed out in PLANTERS BANK OF MISSISSIPPI v. SHARP, 47 U. S. 301, 12 L. ed. 447, Legislatures must be presumed to act from public consideration, being in high public trust, and when their measures relate to matters of general interest, and can be vindicated under express or justly implied powers, and more especially when they appear intended for improvements or for salutary reforms of abuses, the disposition in the judiciary should be strong to uphold them.

> "We assume that the Legislature acts according to its judgment for the best interest of the State." FLORIDA C. & P. R. CO. v. REYNOLDS, 183 U. S. 471, 480.

That each act of legislation is presumed to be in the interest of the public and that the burden is on him who attacks the legislation to show that it is not within the legislative power has been made clear by the Supreme Court of the United States on many occasions. As pointed out in the cases herein cited, the function of the Court is only to ascertain whether or not there existed any reasonable basis for the Legislature enacting the law which was passed. The selection of the subjects of legislation and the conclusions reached by the law-making body is within this constitutional limitation essentially and peculiarly their

own function, which cannot be taken from them by judicial action.

"But liberty of making contracts is subject to conditions in the interest of the public welfare, and which shall prevail—principle or condition—cannot be defined by any precise and universal formula. Each instance of asserted conflict must be determined by itself, and it has been said many times that each act of legislation has the support of the presumption that it is an exercise in the interest of the public. The burden is on him who attacks the legislation, and it is not sustained by declaring a liberty of contract. It can only be sustained by demonstrating that it conflicts with some constitutional restraint, or that the public welfare is not subserved by the legislation. *The legislature is, in the first instance, the judge of what is necessary for the public welfare, and a judicial review of its judgment is limited. The earnest conflict of serious opinion does not suffice to bring it within the range of judicial cognizance.* CHICAGO B & Q RR CO v. McGUIRE, 219 U. S. 549, 562; 55 L. ed. 328, 336, 31 Sup. Ct. Rep. 259; GERMAN ALLIANCE INS. CO. v. LEWIS, 233 U. S. 389, 58 L. ed. ....., 34 S. Ct. Rep. 612." ERIE R. CO. v. WILLIAMS, 233 U. S. 685, 34 S. Ct. 761 (Emphasis ours).

"We are not at liberty to inquire into the motives of the legislature. We can only examine into its power under the Constitution." EX PARTE McCARDLE, 7 Wall. 506, 514.

"The rule is general, with reference to the enactments of all legislative bodies, that the courts cannot inquire into the motives of the legislators in passing them, except as they may be disclosed on the fact of the acts, or inferable from their operation, considered with reference to the condition of the country and existing

legislation." SOON HING v. CROWLEY, 113 U. S. 703, at 710, 5 S. Ct. 730.

"Being a legislative judgment it is presumed to be supported by facts known to the legislature unless facts judicially known or proved precluded that possibility. Hence, in reviewing the present determination, we examine the record not to see whether the findings of the court below are supported by the evidence, but to ascertain upon the whole record whether it is possible to say that the legislative choice is without rational basis." SOUTH CAROLINA HIGHWAY DEPT. v. BARNWELL BROS., 303 U. S. at 191, 58 S. Ct. 510.

"Hence, in passing on the validity of the present classification, it is not the province of a court to hear and examine evidence for the purpose of deciding again a question which the legislature has already decided. *Its function is only to determine whether it is possible to say that the legislative decision is without rational basis.*" (Emphasis ours) CLARK v. PAUL GRAY, 306 U. S. 583, 594, 59 S. Ct. 744.

" . . . The extent to which, as means, they conduce to that end, the degree of their efficiency, the closeness of their relation to the end sought to be attained, are matters addressed to the judgment of the legislature, and not that of the courts. *It is enough if it can be seen that in any degree, or under any reasonably conceivable circumstances, there is an actual relation between the means and the end.*" (Emphasis ours) STEPHENSON v. BINFORD, 287 U. S. 251, 272, 53 S. Ct. 181.

"We need not labor the point, long settled, that where legislative action is within the scope of the police power, fairly debatable questions as to its reasonableness, wisdom and propriety are not for the determination of courts, but for that of the legislative body on

which rest the duty and responsibility of decision. Zahn v. Board of Public Works, 274 U. S. 325, 238, 71 L. ed. 1074, 1076, 47 Sup. Ct. Rep. 493; Hadacheck v. Sebastian, 239 U. S. 394, 408-414, 60 L. ed. 348, 355-358, 36 Sup. Ct. Rep. 143, Ann. Cas. 1917B, 927; Euclid v. Ambler Realty Co., 272 U. S. 365, 388, 71 L. ed. 303, 310, 54 A.L.R. 1016, 47 Sup. Ct. Rep. 114; Jacobson v. Massachusetts, 197 U. S. 11, 30, 49 L. ed. 643, 651, 25 Sup. Ct. Rep. 358, 3 Ann. Cas. 765; Laurel Hill Cemetery v. San Francisco, 216 U. S. 358, 365, 54 L. ed. 515, 518, 30 Sup. Ct. Rep. 301; Thos. Cusack Co. v. Chicago, 242 U. S. 526, 530, 61 L. ed. 472, 475, L.R.A. 1918A, 136, 37 Sup. Ct. Rep. 190, Ann. Cas. 1917C, 594; Price v. Illinois, 238 U. S. 446, 451, 59 L. ed. 1400, 1404, 35 Sup. Ct. Rep. 892." STANDARD OIL CO. v. MARYSVILLE, 279 U. S. 582, 584, 73 L. ed. 859.

"The scope of judicial inquiry in deciding the question of *power* is not to be confused with the scope of legislative considerations in dealing with the matter of *policy*. Whether the enactment is wise or unwise, whether it is based on sound economic theory, whether it is the best means to achieve the desired result, whether, in short, the legislative discretion within its prescribed limits should be exercised in a particular manner, are matters for the judgment of the legislature, and the earnest conflict of serious opinion does not suffice to bring them within the range of judicial cognizance." CHICAGO, B. & Q. R. CO. v. McGUIRE, 219 U. S. 549, 569, 55 L. ed. 339.

"*Nor can we declare the provisions void because it might seem to us that they enforce an objectionable policy or inflict hardship in particular instances.* Chicago, B. & Q. R. Co. v. Nebraska, 170 U. S. 57, 77, 42 L. ed. 948, 955, 18 S. Ct. 513. And see, generally, Chicago, B. & Q. R. Co. v. McGuire, 219 U. S. 549, 55 L. ed. 328, 31 S. Ct. 259. 'Whether the enactment is

wise or unwise,' this court said in that case (p. 569), 'whether it is based on sound economic theory, whether it is the best means to achieve the desired result, whether, in short, the legislative discretion within its prescribed limits should be exercised in a particular manner, are matters for the judgment of the legislature, and the earnest conflict of serious opinion does not suffice to bring them within the range of judicial cognizance.'" (Emphasis ours) BAYSIDE FISH FLOUR CO. v. GENTRY, 297 U. S. 422, 428, 80 L. ed. 776.

"The legislature, being familiar with local conditions, is, primarily, the judge of the necessity of such enactments. The mere fact that a court may differ with the legislature in its views of public policy, or that judges may hold views inconsistent with the propriety of the legislation in question, affords no ground for judicial interference, unless the act in question is unmistakably and palpably in excess of legislative power. Jacobson v. Massachusetts, supra; Mugler v. Kansas, 123 U. S. 623, 31 L. ed. 205, 8 Sup. Ct. Rep. 273; Minnesota v. Barber, 136 U. S. 313, 320; 34 L. ed. 455, 458, 3 Inters. Com. Rep. 185, 10 Sup. Ct. Rep. 862; Atkin v. Kansas, 191 U. S. 207, 223, 48 L. ed. 148, 158, 24 Sup. Ct. Rep. 124.

"If the law in controversy has a reasonable relation to the protection of the public health, safety, or welfare, it is not to be set aside because the judiciary may be of opinion that the act will fail of its purpose, or because it is thought to be an unwise exertion of the authority vested in the legislative branch of the government." McLEAN v. ARKANSAS, 211 U. S. 539, 548, 53 L. ed. 319.

Also see:

Nashville, etc. R. Co. v. White, 278 U. S. 456, 49 S. Ct. 189

Tanner v. Little, 240 U. S. 369, 36 S. Ct. 379

Arizona Copper Co. v. Hammer, 250 U. S. 400, 39 S. Ct. 553

Gant v. Oklahoma City, 289 U. S. 98, 53 S. Ct. 530

ECONOMIC BRIEF

Appellants stress the importance of an economic brief for the purpose of resolving any questions arising upon state action as measured and tested by the Fourteenth Amendment. In their zeal for this form of presentation, appellants assert: "It is now held that any judgment concerning the reasonableness or unreasonableness of any particular legislation must be an informed judgment based upon as precise and accurate information as obtainable concerning existing economic or social conditions involved in and justifying the attempted exercise of the police power." Appellants cite certain cases and law review articles in support of this position. This method of approach is suggested by Mr. Witherspoon in his article (26 Texas Law Review, pp. 59, 60) upon the assumption that this Court will invent a new doctrine called "substantial negation" in order to invalidate state statutes in this field.

Appellee admits that there are certain cases in which relevant information and technical data obtained from official, semi-official and expert sources are helpful in determining whether state action is within or without the proper channel of reserved police power. In so far as economic and social conditions enter into the judicial determination, it would seem that any relevant information by way of judicial notice or as may be presented by counsel may be

considered if the same is persuasive. The inclusion of such material in a separate brief designated "Economic Brief" does not, however, bring about a complete metamorphosis so as to endow this type of knowledge with mystical and inerrant virtues. We intend to use such materials as a part of this brief, but statistical data aside, it will consist of the conclusion and opinions of men. On this point, appellants' contention carried to its logical end would place this case before a board of economists and sociologists for decision, rather than before this Court for consideration and application of constitutional principles. This represents another attempt on the part of appellants to convert this case into an economic issue rather than a legal problem; to establish a ratio decidendi of "influence pressures," "economic pressures" and an "adequate share of the joint products of capital and labor." In so far as appellants' criterion obscures and destroys fundamental legal concepts as to the constitutional rights and powers of a state to protect its own citizens and the general public, we deny its validity. Appellants' position would reduce the general public to the status of a spectator on the sidelines while two economic titans, capital and labor, wage economic war to the bitter end for the prize of total economic control of the various states and the nation. We assert that a state has a right to experiment in its methods of control and regulation as authorized by the police power even though the reasons and motives may seem novel and cannot be squared with current economic and social ideologies. To this extent, at least, "precise and accurate information" cannot control established constitutional rules and principles.

That the use of facts on constitutional issues has its limitations is shown by an article cited by appellants. In 40 Harvard Law Review, 960, 961, 962 (Brown: Due Pro-

cess, Police Power, and the Supreme Court), the author says:

"Fortunately, the present tendency is toward a closer scrutiny of the factual situation and, in the case of certain of the justices, toward a general use of scientific testimony. The use of such expert testimony is not, however, a universal solution of the problem. Police power cases inevitably present two questions of fact: (1) the present situation; (2) the probable effect of the state's interference. As to the first question, it is true that great difficulty is not always experienced. It is not hard to determine whether long hours of labor have a deleterious effect on the health of workers, or whether certain solicitors on trains to Hot Springs, Arkansas, are a nuisance, or whether the payment of a miner's wage on the basis of screened coal tends to defraud the laborer. But the question is not always so clear. In nearly every business or practice there exist along with the dangers to society, undoubted benefits. If oleomargarine and 'filled milk' may be manufactured so as to be unhealthy and sold so as to work a fraud, there is in the cheaper products a boon to the man unable to afford the better ones. The difficulty of proof is intensified when large and widespread businesses are concerned. Can economists definitely answer the question whether stock and produce exchanges are a benefit or an evil? Can it be said with confidence that the use of trading stamps demoralizes the people by inciting reckless buying? Can statistics prove that the private school does or does not produce a better citizenry than an exclusive public school system? In such matters the opinion of the expert, the economist, and the governmental bureau should be received and respected, but they do not become science by bearing the stamp of government, university, or technical magazine. As to the right of employment agencies to exist, a conclusion even of a

Congressional Committee that 'the necessity of paying for the privilege of going to work, and paying more the more urgently the job is needed, not only keeps people unnecessarily unemployed, but seems foreign to the spirit of American freedom and opportunity,' does not become scientific fact because of the source of its emanation. Whether the undoubted evils of the agencies justified their abolition, remained a question not of fact but of opinion.

"Difficulties are enhanced when we proceed from a consideration of the *status quo* to the probable effect of the means adopted to ameliorate that status. The vaccination case was perhaps easy but the feasibility of preventing fraud in the sale of bread by requiring a loaf to have a definite weight twenty-four hours after baking, was a closer question, and there is a total lack of accurate evidence as to the effect which minimum wage statutes would have on the condition of the poorer paid. When it is remembered that the Court also inquires whether the means proposed are 'unusual, unnecessary, or oppressive,' it is seen that we are indeed passing from the realm of objective fact into that of subjective belief. Whether it is unreasonable and oppressive to secure industrial peace by compelling employer and employee to arbitrate; to obtain a homogeneous people by preventing the teaching of foreign languages to small children; to secure cheaper housing by compelling the landlord to decrease his rents; and to alleviate the poverty of the servants by requiring that the master increase her wages, are questions bottomed not on law or science but on one's inherited or acquired opinions of history, politics and economics."

Scientific precision, even when possible, is not the test of constitutionality. In SPROLES v. BINFORD, 286 U. S. 374, 52 S. Ct. 581:

"To make scientific precision a criterion of constitutional power would be to subject the State to an intolerable supervision hostile to the basic principles of our Government and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to secure. OHIO OIL CO. v. CONWAY, 281 U. S. 146, 159. When the subject lies within the police power of the State, debatable questions as to reasonableness are not for the courts but for the legislature, which is entitled to form its own judgment, and its action within its range of discretion cannot be set aside because compliance is burdensome. STANDARD OIL CO. v. MARYSVILLE, 279 U. S. 582, 586; PRICE v. ILLINOIS, 238 U. S. 446, 452, 453; HADACHECK v. LOS ANGELES, 239 U. S. 394, 410; EUCLID v. AMBLER REALTY CO., 272 U. S. 365, 388; ZAHN v. BOARD OF PUBLIC WORKS, 274 U. S. 325, 328."

In passing on a state conservation statute (R. R. COMMISSION v. OIL CO., 311 U. S. 570, 61 S. Ct. 343), this Court said:

"The constitution does not provide that the federal courts shall strike a balance between ascertainable facts and dubious inferences underlying such a complicated and elusive situation as is presented by the Texas Oil fields in order to substitute the court's wisdom for that of the legislative body. STANDARD OIL CO. v. MARYSVILLE, 279 U. S. 582."

In upholding a statute fixing the fee that could be charged by private employment agencies (OLSEN v. NEBRASKA, 313 U. S. 236, 61 S. Ct. 862), this Court said:

"But respondents maintain that the statute here in question is invalid for other reasons. They insist that

special circumstances must be shown to support the validity of such drastic legislation as price-fixing, that the executive, technical and professional workers which respondents serve have not been shown to be in need of special protection from exploitation, that legislative limitation of maximum fees for employment agencies is certain to react unfavorably upon those members of the community for whom it is most difficult to obtain jobs, that the increasing competition of public employment agencies and of charitable, labor union and employer association employment agencies have curbed excessive fees by private agencies, and that there is nothing in this record to overcome the presumption as to the result of the operation of such competitive, economic forces. And in the latter connection respondents urge that, since no circumstances are shown which curb competition between the private agencies and the other types of agencies, there are no conditions which the legislature might reasonably believe would redound to the public injury unless corrected by such legislation.

"We are not concerned, however, with the wisdom, need, or appropriateness of the legislation. Differences of opinion on that score suggest a choice which 'should be left where . . . it was left by the Constitution—to the States and to Congress.' RIBNIK v. McBRIDE, *supra*, at p. 375, dissenting opinion. There is no necessity for the state to demonstrate before us that evils persist despite the competition which attends the bargaining in this field."

In passing on moratory legislation of the State of New York (EAST N. Y. BANK v. HAHN, 326 U. S. 230, 66 S. Ct. 69):

"On the basis of expert opinion, documentary evidence, and economic arguments of which we are to

take judicial notice, it urges such a change in economic and financial affairs in New York as to deprive of all justification the determination of New York's Legislature of what New York's welfare requires. We are invited to assess not only the range and incidence of what are claimed to be determining economic conditions insofar as they affect the mortgage market—bank deposits and war savings bonds; increased payrolls and store sales; available mortgage money and rise in real estate values—but also to resolve controversy as to the causes and continuity of such improvements, namely the effect of the war and of its termination, and similar matters. Merely to enumerate the elements that have to be considered shows that the place for determining their weight and their significance is the legislature not the judiciary."

In the case of LA TOURETTE v. McMASTERS, 248 U. S. 465, 39 S. Ct. 160:

"'But we need not cast about for reasons for the legislative judgment. We are not required to be sure of the precise reasons for its exercise or be convinced of the wisdom of its exercise.' It is enough if the legislation be passed in the exercise of a power of government and has relation to that power. RAST v. VAN DEMAN & LEWIS CO., 240 U. S. 342, 365, 366, and cases cited; also BUNTING v. OREGON, 243 U. S. 426, 437."

In the case of PRUDENTIAL INSURANCE CO. v. CHEEK, 259 U. S. 530, 42 S. Ct. 516:

"It is not for us to point out the grounds upon which the state legislature acted, or to indicate all the grounds that occur to us as being those upon which they may have acted. We have not attempted to do this; but merely to indicate sufficient grounds upon which they

reasonably might have acted and possibly did act to show that it is not demonstrated that they acted arbitrarily, and hence that there is no sufficient reason for holding that the statute deprives the corporation of its liberty or property without due process of law."

In the case of INSURANCE CO. v. GLIDDEN CO., 284 U. S. 151, 158, 52 S. Ct. 69:

"The record and briefs present no facts disclosing the reasons for the enactment of the present legislation or the effects of its operation, but as it deals with a subject within the scope of the legislative power, the presumption of constitutionality is to be indulged. O'GORMAN & YOUNG, INC., v. HARTFORD FIRE INS. CO., 282 U. S. 251; see STANDARD OIL CO. v. MARYSVILLE, 279 U. S. 582, 584; OHIO EX REL. CLARKE v. DECKEBACH, 274 U. S. 392, 397. We cannot assume that the Minnesota legislature did not have knowledge of conditions supporting its judgment that the legislation was in the public interest, and it is enough that, when the statute is read in the light of circumstances generally known to attend the recovery of fire insurance losses, the possibility of a rational basis for the legislative judgment is not excluded.

"Without the aid of the presumption, we know that the arbitration clause has long been voluntarily inserted by insurers in fire policies, and we share in the common knowledge that the amount of loss is a fruitful and often the only subject of controversy between insured and insurer; that speedy determination of the policy liability such as may be secured by arbitration of this issue is a matter of wide concern, see FIDELITY MUT. LIFE ASSN. v. METTLER, 185 U. S. 308; FARMERS' & MERCHANTS' INS. CO. v. DOBNEY, 189 U.S. 301; that in the appraisal of the loss by arbitra-

> tion, expert knowledge and prompt inspection of the damaged property may be availed of to an extent not ordinarily possible in the course of the more deliberate processes of a judicial proceeding. These considerations are sufficient to support the exercise of the legislative judgment in requiring a more summary method of determining the amount of the loss than that afforded by traditional forms.".

An examination of the opinion of the Supreme Court of North Carolina (228 N. C., 352, 45 S. E. (2d) 860) will show that Justice Seawell made a factual study and used such information and data as appellants now recommend to this Court.

The status of the closed shop in England and other nations was considered, and the situation in various trades and industries. The notes to the opinion show that Justice Seawell had before him the Report of the Committee (House of Representatives, 80th Congress, First Session, Report No. 245, accompanying H. R. 3020) upon which the Taft-Hartley Act was debated. The experience of other states was examined, and there was available the data presented by counsel for appellants which now appears as Exhibits Nos. 1, 2, R. 25, 40; No. 34. The case was considered by the Supreme Court of North Carolina according to the method selected and approved by appellants.

III

THE NORTH CAROLINA STATUTE HAS A REAL AND REASONABLE RELATION TO PUBLIC WELFARE, IN THAT IT PREVENTS MONOPOLIES AND TRADE UNION ABUSES DIRECTLY AND INDIRECTLY CAUSED BY THE CLOSED SHOP.

The General Assembly of North Carolina considered the problem of a trade union monopolizing the available labor power in an enterprise. Section 2 of the statute in question (Chapter 328, Session Laws of 1947) is as follows:

> "Any agreement or combination between any employer and any labor union or labor organization whereby persons not members of such union or organization shall be denied the right to work for said employer or whereby such membership is made a condition of employment or continuation of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is hereby declared to be against the public policy and an illegal combination or conspiracy in restraint of trade or commerce in the State of North Carolina."

North Carolina also has a general statute (Chapter 75 of General Statutes of North Carolina) on the subject of monopolies, trusts and combinations in restraint of trade. We quote the first two sections of the North Carolina Monopoly Act, as follows:

> "§ 75-1. COMBINATIONS IN RESTRAINT OF TRADE ILLEGAL.—Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce in the state of North Carolina is hereby declared to be illegal. Every person or corporation who shall make any such contract expressly or shall knowingly be a party thereto by implication, or who shall engage in any such combination or conspiracy, shall be guilty of a misdemeanor, and upon conviction thereof such person shall be fined or imprisoned, or both, in the discretion of the court, whether such person entered into such contract individually or as an agent repre-

senting a corporation, and such corporation shall be fined in the discretion of the court not less than one thousand dollars.

"§ 75-2. ANY RESTRAINT IN VIOLATION OF COMMON LAW INCLUDED.—Any act, contract, combination in the form of trust, or conspiracy in restraint of trade or commerce which violates the principles of the common law is hereby declared to be in violation of § 75-1."

The Supreme Court of North Carolina has not considered any case which attempted to apply the State Anti-Trust Law to trade unions and their activities prior to the statute now under consideration. There are cases giving constructions of the statute and pointing out the difference between common-law concepts of monopoly and the modern rule.

State v. Craft, 168 N. C. 208, 83 S. E. 772
State v. Coal Co., 210 N. C. 742, 188 S. E. 412
Bennett v. Southern Ry. Co., 211 N. C. 474, 191 S.E. 240

We do not intend to enter into a long discussion as to the nature of monopolies and combinations in restraints of trade as applied to trade unions and their practices. It is certain that the Federal Courts considered many activities and practices of trade unions within the Sherman Anti-Trust Act. We cite the primary cases, as follows:

Loewe v. Lawlor, 208 U. S. 274, 28 S. Ct. 301
Lawlor v. Loewe, 235 U. S. 522, 35 S. Ct. 170
Duplex Printing Co. v. Deering, 254 U. S. 443, 41 S. Ct. 172
Amer. Steel Foundries v. Tri-City Council, 257 U. S. 184, 42 S. Ct. 72

Coronado Co. v. U. M. Workers, 268 U. S. 195, 45 S. Ct. 551

United States v. Brims, 272 U. S. 549, 47 S. Ct. 169

Bedford Co. v. Stone Cutters Ass'n., 274 U. S. 37, 47 S. Ct. 522

Local 167 v. United States, 291 U. S. 293, 54 S. Ct. 396

Apex Hosiery Co. v. Leader, 310 U. S. 469, 60 S. Ct. 982

United States v. Hutcheson, 312 U. S. 219, 61 S. Ct. 463

Allen Bradley Co. v. Local Union No. 3, 325 U. S. 797, 65 S. Ct. 1533

There is no doubt as to some of the state courts leaning toward the position that trade unions were engaged in many activities that promoted combinations in restraints of trade, and this was especially true of those states early in the field of anti-trust legislation. The cases cited below will illustrate our statement:

Curran v. Galen, 46 N. E. 297 (N.Y.)

Michaels v. Hillman, 183 N.Y.S. 77 (N.Y.)

Justin Seubert, Inc. v. Reiff, 98 Misc. 402, 164 N.Y.S. 522 (N.Y.)

Connors v. Connolly, 86 Atl. 600 (Conn.)

Berry v. Donovan, 74 N. E. 603 (Mass.)

Moore v. Bennett, 140 Ill. 69, 29 N. E. 888

Gatzow v. Beuning, 106 Wis. 1, 81 N. W. 1003

Irving v. Neal, 209 Fed. 471

Lehigh Structural S. Co. v. Atlantic S. & R. Co., 111 Atl. 376 (N.J.)

As illustrations of states emphasizing the anti-trust features of their statutes:

Campbell v. Motion Picture Machine Operators, 151 Minn. 220, 186 N. W. 781

Standard Engraving Co. v. Volz, 193 N.Y.S. 831 (N.Y.)

State v. Employers of Labor, 102 Neb. 768, 169 N. W. 717, 170 N. W. 185

The powers of the states to decide and enact into law those specific acts and conduct which shall constitute combinations in restraints of trade has long been established. Like other reserved powers, there must be a rational basis for the legislative decision; and under conceivable circumstances, there must be an actual relationship between the means and the end. Cases supporting an exercise of state power in regulating and prohibiting combinations that result in restraints of trade are as follows:

Waters-Pierce Oil Co. v. Texas (No. 1), 212 U.S. 86, 29 S. Ct. 220

National Cotton Oil Co. v. Texas, 197 U.S. 115, 25 S. Ct. 379

Smiley v. Kansas, 196 U.S. 447, 454, 455, 25 S. Ct. 289

International Harvester Co. v. Missouri, 234 U.S. 199, 34 S. Ct. 859

Watson v. Buck, 313 U.S. 387, 61 S. Ct. 962

Central Lumber Co. v. South Dakota, 226 U.S. 157, 33 S. Ct. 66

Grenada Lumber Co. v. Mississippi, 217 U.S. 433, 30 S. Ct. 535

In WATSON v. BUCK, *supra*:

"In the consideration of this case, much confusion has been brought about by discussing the statutes as though the power of a state to prohibit or regulate

combinations in restraint of trade was identical with and went on further than the power exercised by Congress in the Sherman Act. Such an argument rests upon a mistaken premise. Nor is it within our province, in determining whether or not this phase of the state statute comes into collision with the Federal Constitution or laws passed pursuant thereto, to scrutinize the act in order to determine whether we believe it to be fair or unfair, conducive to good or evil for the people of Florida, or capable of protection or defeating the public interest of the state. These questions were for the legislature of Florida and it has decided them."

In CENTRAL LUMBER CO. v. SOUTH DAKOTA, *supra*:

"If the legislature thought that that particular manifestation of ability usually came from great corporations whose power it deemed excessive and for that reason did more harm than good in their State, and that there was no other case of frequent occurrence where the same could be said, we cannot review their economics or their facts. That the law embodies a widespread conviction appears from the decisions in other States. STATE v. DRAYTON, 82 Nebraska, 254. STATE v. STANDARD OIL CO., 111 Minnesota, 85; 126 N.W. Rep. 527. STATE v. FAIRMONT CREAMERY, 153 Iowa, 702; 133 N. W. Rep. 895. STATE v. BRIDGEMAN & RUSSELL CO., 117 Minnesota, 186; 134 N. W. Rep. 496."

MONOPOLY AND RESTRAINT OF TRADE IS THE INEVITABLE RESULT OF THE CLOSED SHOP

It is easy to see, from a casual reading of the brief, that appellants hope that this Court will weigh this case by the scale of conditions that existed as to trade unions in former

days. Just as a large group of business managers continue to think of capitalistic economy in terms of Ricardo's philosophy and laissez faire, so do the leaders of trade unions "warm their hands at the camp fires of the past," and attempt to put new wine in old bottles. Such concepts are based upon the idea that labor is always the so-called underdog. This concept is no longer applicable to the labor of today with its modern trade unions.

Professor Slichter of Harvard, in his book entitled "The Challenge of Industrial Relations," (Cornell University Press, 1947) comments on the power of trade unions today:

> "Between 1933 and 1945 union membership in the United States increased fivefold, from about three million to about fifteen million. Unless unions make grievous blunders and lose confidence of the community (by interunion rivalry, for example), this growth will continue. A union membership of over twenty million within the next decade is a strong probability.
>
> "The rise of unions constitutes an epoch-making change in the economy—quite comparable to such institutional changes as the rise of the modern credit system or of the corporation. Unions are no longer simple organizations which put workers in a moderately better bargaining position in dealing with employers. They are seats of great power—of the greatest private economic power in the community. Their policies from now on will be a major determinant of the prosperity of the country. If their policies are farsighted, if unions see their stake in the prosperity of the community as a whole, unions will make a major contribution toward building a greater civilization in America. If unions are narrow, uninformed, and shortsighted in their policies, they will be as great a problem for the community as was the parochialism of the

towns and small principalities in the later Middle Ages. * * * *

"Today the United States has the largest, most powerful, and most aggressive labor movement which the world has ever seen. The 190-odd national unions recently had nearly 15 million members. Today, though the membership is smaller, they include nearly one-third of the 40 million employees outside agriculture and the professions. About 1.4 million members are professional or clerical workers. Two-thirds of the workers in manufacturing are covered by union agreements and about one-third in non-manufacturing industries outside of agriculture and the professions. In a number of non-manufacturing industries, such as coal mining, construction, railroading, and trucking, over four-fifths of the employees are under wage agreements. Retailing, wholesaling, and agriculture are the only important areas of employment in which the proportion of organized employees is low. The trade unions are the most powerful economic organizations in the community—in fact, they are the most powerful economic organizations which the community has ever seen. Their policies will be a major influence in determining how much the community produces, how rapidly it adds to its capital, and how the product of industry is divided."

In former times, the right of employees to combine and organize was recognized as beneficial and has been fostered by national and state legislation. There is no need to quote the national and state acts and the judicial interpretations of same. The exemptions from anti-trust acts have been commented upon. It was never contemplated that these domains of private power would convert this approval and these concessions into a monolithic organization maintained by the compulsive power of the closed shop. Certainly

it was never contemplated that the dissenter (non-union employee) should be coerced and crushed in a violent struggle for economic power. Instead of making trade unions attractive to the non-union man on a voluntary basis by democratic processes and the offer of concrete benefits, the simple technique of compulsory membership by the tyrannical power of the closed shop is more and more invoked. This leads, as if by natural law, to restraint of trade and monopoly. A few practical examples which are common knowledge:

(1) We now have, more and more, the spectacle of trade unions joining with employers in a community to dominate the sale and use of a commodity, destroy competition, establish artificial wage scales with no reference to production and establish total unionism by force. In such a plan of operation, the general welfare of the public is not considered.

Allen Bradley Co. v. Local Union No. 3, 325 U.S. 797, 65 S. Ct. 1533

Brescia Const. Co. v. Stone Masons' Contractors' Assoc., 187 N.Y.S. 77 (N.Y.)

Overland Pub. Co. v. H. S. Crocker, Co., 193 Cal. 213, 210 P. 841

Campbell v. People, 72 Col. 213, 210 P. 841

A. T. Stearnes Lumber Co. v. Howlett, 260 Mass. 45, 157 N.E. 82

Purrington v. Hinchliff, 120 Ill. A. 523, 76 N.E. 47

Borderland Coal Corp. v. International Organization U. M. W., 275 Fed. 871

It is not within the limits of space and time accorded to this brief to discuss the facts and details of these cases.

It does not, however, detract from our argument that in some instances, courts have held that unions were exempt from anti-trust laws because of exceptive provisions therein; but for these exemptions, the restraints would have been unlawful. Obviously, these conditions could not exist without the closed shop.

(2) Secondary boycott—"a combination not merely to refrain from dealing with complainant, or to advise or by peaceful means persuade complainant's customers to refrain ('primary boycott'), but to exercise coercive pressure upon such customers, actual or prospective in order to cause them to withhold or withdraw patronage from complainant through fear of loss or damage to themselves should they deal with it." (See: DUPLEX PRINTING CO. v. DEERING, 254 U.S. 443, 41 S. Ct. 177.)

Secondary Picketing—participants in the primary dispute picketing and using coercive measures against the primary employer's vendees, distributors, and extending to ultimate consumers in some cases.

Meadowmoor Dairies v. Drivers' Union, 371 Ill. 377, 21 N.E. (2d)

Evening Times Publishing Co. v. Am. Newspaper Guild, 122 N.J.Eq. 545, 199 A. 598

United Union Brewing Co. v. Dave Beck, 100 Wash. 412, 93 P. (2d) 772

Parker Paint & Wall Paper Co. v. Local Union, 87 W. Va. 631, 105 S. E. 911

The secondary strike—Based upon refusal to work with non-union employees, a refusal to process non-union goods, or to partially or completely process materials or commod-

ities going to non-union plants. (See Teller: Labor Disputes and Collective Bargaining, Vol. one, Chap. 7.)

(3) The makework system—examples as given by Thurman Arnold in Reader's Digest, Vol. 38, No. 230, June, 1941:

"'One method is to force the employer to hire extra men for no good reason. The teamsters in New York decided that every truck entering the city must take on an unnecessary man who gets $9 a day for doing no work. That's why it costs $112 more to distribute a carload of vegetables through the Manhattan market than in neighboring regions free of labor exploitation. This idea was too good not to be imitated by unions all over the country. Electricians' unions in various cities insist that a full-time electrician be hired on any construction job using temporary power or light. Frequently he spends his day playing solitaire; his 'work' consists of pulling a switch one way when he arrives, the other way when he quits. Many operating engineers' unions will not allow a man to be hired for less than three days; if his employment exceeds that period he must be hired for a whole week.

"To milk dealers in New York who are willing to furnish milk at lower prices by keeping depots open only an hour and a half a day, the union says 'No.' Dealers must hire a full complement of labor full time, or shut up shop. Somebody in Dubuque had the bright idea that the delivery cost of two or three quarts of milk was the same as one. Therefore he offered a lower price to consumers who took more milk for their children. Here also the union said 'No.' In Chicago milk was being sold at lower cost to consumers willing to buy it at stores. The milk wagon drivers stepped in, and the more expensive system of bottle delivery was forced on low-income groups.

"By making alliances with each other, such unions extend their power to exploit consumers. Students at the University of Chicago formed a cooperative club. They bought milk cheaply from a farmers' cooperative. The milk wagon drivers told them to stop. The students insisted that in a free country they could buy where they pleased. So they had to be taught a lesson. First the union cut off their food deliveries. The students carried their own food. Then the union cut off their garbage service. The students capitulated.

"These 'middleman' unions likewise stop improvements in materials and methods. Look at what the Hod Carriers' Union is doing in Chicago. To mix concrete mechanically at a central plant and carry it to the job in trucks with revolving mixers improves quality and cuts down building costs—and subsequent rentals. But the Chicago hod carriers refused to allow use of truck mixers.

"In Belleville, Ill., unions have been indicted with dealers and contractors for preventing the building of houses with prefabricated structural parts. In Houston, Texas, plumbers insisted that pipe made for particular jobs would not be installed unless the thread were cut off and a new thread made on the job. In Chicago, sash, frames and screens must be primed, painted and glazed on the job. Plumbers and electricians in other places insist that pipe cutting and wiring must be done on the job—more expensively than at the factory. Painters' unions in many districts will not permit the use of spray guns; brushes make more work. Similarly, in Washington, D. C., machinery must not be used to cut wire or thread pipe.

"It costs $1000 more to build a six-room house in Cleveland than in Detroit. Why? One reason is that contractors who use prefabricated materials or economical methods are afraid to do business in Cleveland.

"Incidentally, nobody gets that extra $1000. Houses simply aren't built. In 1939, FHA loans for houses in Detroit totaled $50,000,000; in Cleveland, only $21,000,000. Not even organized labor profits. Cleveland carpenters made more by the hour; but Detroit carpenters had more work and larger annual incomes. Where high costs restrict building, the housing shortage gets more acute and labor has to pay higher rents out of less income.

"Many unions resort to the device of erecting local embargoes. In Chicago, a building trades council will not allow the use of stone which has been cut in Indiana. It must be brought in rough, which increases freight costs 20 percent; it must be cut in Chicago, though the quarries are more efficiently equipped to do the work. In Pittsburgh and San Francisco, carpenters' unions prohibit the use of millwork made out of town. New York metal lathers will not touch lath fabricated outside the city. All this flimflam, which is spreading all over the country, might be funny if it were not so expensive to people with low incomes who have to cut down on food in order to pay higher rents.

"Another threat of the holdup unions is to business competition and to the existence of small independent business concerns. In Washington, the teamsters threatened to strike to compel certain stores to increase the price of bread, the whole maneuver pleasing other retail stores that did not like the competition of a larger loaf for the standard price.

"Think of the owner of a little clothing store in Washington who had his shop painted by a CIO union. He then was picketed to compel him to have his shop repainted by the AFL union. He couldn't afford that expense.

"In Detroit three wholesale paper dealers are told by the teamsters' union to go out of business. There is nothing they can do about it. They are not allowed to hire union men; they cannot get their paper hauled. The union has made a deal with some employers to eliminate competitors. Likewise, 65 independent truckers in Pittsburgh are being forced out of business in spite of the fact that they are willing to hire union labor.

"Then there is the exploitation of labor by labor. At Fort Meade the Steamfitters' Union admitted only six new members during the peak of construction; thus the favored few on the inside were able to work overtime at double pay, earning $150 a week. The electricians, instead of admitting new members, levied a daily fee of $1 or $2 per man for a working permit. The carpenters went to the other extreme, taking into the union a mass of untrained and incompetent men bound to be discharged soon after paying their admission fees. The New York Times reports that the union 'take' from this source was over $400,000.

"Some unions have such high admission fees that it is almost impossible for the average man, no matter how well qualified, to join. The truckers in Seattle, for instance, charge $500. The Motion Picture Union in Cleveland grabs $1000. And the Glaziers' Union in Chicago demands a cool $1500 for the right to work.

"Does labor want the sort of thing I have been describing? I do not believe it. I can find no evidence that such impositions are thought up by the rank and file. Unfortunately, the rank and file often have little control over union affairs. In Chicago's Hod Carriers' Union, for example, there has been no election for 29 years. Joseph V. Moreschi, head of the union, has a large income from the dues he collects from common

labor. Why should he submit that income to the hazards of an election?

"When individuals do protest, unscrupulous leaders have ways of punishing them. Here's one example. Two men—let's call them Smith and Black—dropped into the Department of Justice the other day. They had been members of a union in Chicago. Dissatisfied with the management, they had made a protest. The management took away their union cards. This was a catastrophe because the union's old-age benefit fund made a membership worth about $5000. Smith and Black went into court and got an injunction. The union fought the injunction, and during the ensuing litigation Smith and Black went broke. So they gave up their retirement funds and moved to Washington, where, being good workmen, they soon got jobs. As soon as they were established the Chicago union found out about it and told the Washington employer to fire them. He had to comply.

"Smith and Black are about 50 years old. They are skilled in their trade. But they can't work at that trade any longer. They are stunned and beaten men. It doesn't take many such examples to prove to the workman that he had better not protest too much against the actions of the union management."

Opinion of Eric Johnston, Reader's Digest, Vol. 44, No. 264, April, 1944:

"Arbitrary refusal to accept workers into membership. When a union has a closed-shop contract, a refusal of membership means that the worker is deprived of his livelihood. This is accomplished by restricting new men to temporary 'work permits,' or by putting the initiation fee so high the worker cannot pay it. All such maneuvers are designed to create a monopoly of

jobs for union members. How popular do you think the idea of monopoly is with the American people?"

Mr. Arnold's further examples of makework or featherbedding, Reader's Digest, Vol. 44, No. 261, January, 1944:

"But those friends have been obsessed with the theory that if labor leaders and farmers and consumers and businessmen will only sit down and discuss their problems, indefensible exploitation of labor power will cease without the necessity of limiting the abuse of that power by law. Such a result was not observable when the plumbers sat down with the manufacturers and prevented home builders from getting cheap fixtures. It did not happen when John L. Lewis struck against the Government's emergency anti-inflation policy.

"Nor did it happen when Mr. Petrillo, head of the musicians' union, conferred with the government conciliator who was trying to protect record manufacturers who were being driven out of business and small independent radio stations which were compelled to hire unnecessary labor they could not afford. Instead, Mr. Petrillo said he would stop commercial programs by those who did not pay tribute to his union. As to 'canned music,' he was quoted in the New York Times as asserting: 'We're not going to make any transcriptions at any price, because the companies haven't anything we want. If the transcription companies gave us their entire gross income it's still small peanuts to the musicians' federation.'

"Thus it appears that the freedom to produce an article which a labor union doesn't like is gone from our list of freedoms. Mr. Petrillo is only a picturesque example of a wide variety of coercive exploitation of consumers and businessmen and workers themselves,

for purposes which no one in his right mind would consider legitimate labor objectives.

"It is beside the point to say that history shows labor more sinned against than sinning. When the development of mass production in housing is made impossible in cities where labor unions will not tolerate improved methods of building, when farmers cannot grade their own eggs and ship them to market because of the arbitrary fiat of a union, when a union prevents the sale of cheaper bread, when independent businessmen are ruthlessly destroyed by a struggle for domination between two unions, when workmen are charged for the right to work, when stories of union racketeering are published everywhere, it is no use pointing out the sins of other groups as an excuse.

"Of course, only a few unions strategically located are abusing their power; but unfortunately these dominate the production and distribution of some of the necessities of life. For example, the Milk Drivers Union in New York would not conform to an order of the Office of Defense Transportation curtailing deliveries to save gasoline. The union said that the order would cause the loss of two to three thousand jobs. The Mayor of New York pointed out that men were scarce and that 2000 jobs were open in the police and fire departments. Such strikes will continue so long as unions are permitted by law to preserve useless jobs at the expense of business and the consuming public.

"What is the reason for the restrictive policies to which labor unions have become committed? A certain percentage is graft and corruption, but a larger percentage is the result of the age-old struggle for economic power by men who love power. Whenever a small group of individuals, uncurbed by legal authority, is permitted to dominate any important part of the pro-

duction or distribution of the necessities of life, these results will inevitably follow:

"They seek to consolidate their power by destroying existing independent enterprise.

"They prevent new enterprise from entering the field.

"They restrict production and raise prices.

"They stop the introduction of more efficient methods of production in order to maintain obsolete ways in which they have a vested interest.

"They set up an arbitrary and despotic control over the industry and exploit members of their own group.

"They enter into politics, using money and economic coercion to maintain themselves in power."

(4) The Closed Union—This represents the most glaring example of the natural development of the closed shop. It is usually accomplished by admission practices. Slichter; "The Challenge of Industrial Relations":

"Admission requirements. In general, unions admit any properly qualified worker without regard to creed, politics, or race and without imposing onerous economic restrictions. And yet restrictions are far from rare. The wire weavers admit only Christians and the railway carmen and the masters, mates, and pilots require belief in a Supreme Being. A substantial number of unions bar Communists and others deny Communists the right to hold office. The United Mine Workers is one of the unions barring membership to Communists. The carpenters' union is another. The A. F. of L. at its 1939 convention advised its constituent unions to exclude Communists. A number of

unions still exclude women. Discrimination against Negroes is the most important restriction on union membership. About twenty national unions exclude Negroes either by their constitutions or by their rituals. Many local unions exclude Negroes where the nationals do not. Some unions discriminate against Negroes by putting them in separate locals or by limiting their right to hold office.

"A few unions require candidates for admission to serve onerous apprenticeships, but in most cases the terms of apprenticeship are reasonable and experience at the trade is counted as equivalent to apprenticeship. The variation in admission fees is wide. Some nationals limit the fees which their locals may charge. The Amalgamated Clothing Workers puts the limit at $10, the bricklayers at $100, and the lathers at $100. Initiation fees of $200 or more, however, are far from rare, especially in the building trades. The glaziers in Cincinnati charge $400 and in Chicago $1,500. Some locals of the motion picture operators charge $500 to $600. A large local of the teamsters' union in New England, against the advice of its officers, put the initiation fee at $250. Soon the rank and file began to ask that their friends and relatives be taken in for less. As a result, the high fee was repealed. Most restrictive of all is the refusal of a local union to admit anyone. Sometimes the rule is that no one will be admitted while members are out of work. The influence of the national officers of unions is almost invariably against the refusal of locals to accept members. The national officers know that this refusal in the long run will weaken the union by forcing a larger and larger proportion of the workers in the occupation or industry into non-union shops."

In Reader's Digest, Vol. 44, No. 264, April, 1944, Eric Johnston comments on this practice:

"Restraints on production. From the economic point of view, this one is the worst.

"As developed by some unions, these restraints are called 'feather-bedding' and 'slow-downing.' More men than are needed for the job. Each man doing less than he could do. Waste of manpower. Waste of human resources. It is a grievous wrong to the whole American economic system.

"There are two comments to be made on it.

"In the first place, some enlightened unions have turned against this kind of thing and are earnestly helping their employers to increase output. They realize that if the workers are to have the good things of life, those things must be *produced* and produced *more abundantly*.

"In the second place, some employers are themselves to blame. For what is the basic cause of 'feather-bedding' and of 'slow-downing' by workers? It is this: The workers say to themselves, 'Listen!. As soon as this job is finished, we're going to get laid off and thrown into the street. So let's go slow and make the job last.'

"Gentlemen of management, *you* don't get laid off. You're part of what we call the 'overhead' of a business. The 'overhead' has to go on, even between jobs, in order to hold the business together. But doesn't it occur to you that the worker also has an 'overhead'? He has to keep on paying the landlord and the grocer and the butcher. His costs don't stop just because he is laid off.

"We have to have more job security in America. We must strive to give our workers continuous employment. Where that's impossible, we must develop a

sane, sensible program for more adequate unemployment insurance which will take care of the worker's 'overhead' during his times of being laid off.

"Then the unions must do their part. They must abolish rules that hold a man down to doing half a man's work. You can't build a strong America on half-men."

This same problem is also discussed in the following articles:

Donald R. Richberg, Reader's Digest, Vol. 50, No. 299, March, 1947.

Ralph A., Newman; Membership Requirements in Closed Union, Where There is a Closed Shop; 43 Col. Law Review 42.

Arbitrary Action over Union Members in Closed Shop; Example of: Senate Report No. 105, P. 6.

See also example of punishment inflicted on union members; Thurman Arnold, Reader's Digest, Vol. 38, No. 240, June, 1941, p. 139; Editorial by David Lawrence, Reader's Digest, Vol. 50, No. 298, p. 18; House Report 245, 80th Congress; 1st Sess. Senate Report, 105, 80th Congress, 1st Sess.

(5) Strikes called for compulsory union membership purposes.

On this subject, we could cite many cases and articles. We cite only a few:

Apex Hosiery Co. v. Leader, 310 U. S. 409, 60 S. Ct. 987

Hunt v. Crumboch, 325 U. S. 821, 65 S. Ct. 1545

Allen Bradley Co. v. Local Union No. 3, 325 U. S. 797, 65 S. Ct. 1533

There are also many cases decided by the Supreme Court of the various states on this subject. We here ask the Court to consider the reasons advanced by appellee under Part I of its Brief. However, in connection with this subject, we quote from an article written by T. T. Hammond, 21 N. C. L. Rev. 127, under the direction of Dr. Harry D. Wolf, Professor of Labor Law, University of North Carolina, and Judge J. Warren Madden, former Chairman of the National Labor Relations Board. The quotation follows:

"ARGUMENTS AGAINST THE ALL-UNION SHOP:

"Numerous arguments against the all-union shop can be found in magazines and newspapers, and in the numerous pamphlets distributed by the National Association of Manufacturers and other employer associations. The usual arguments can be summarized as follows: (The term 'closed shop' is always used in these arguments.)

"1. The closed shop is a denial of one of the fundamental rights of man, the right to work. It forces a worker to join a private organization against his will in order to exercise his individual right to earn a living.

"2. The closed shop is undemocratic because it does not protect minority rights. It is one thing for the minority to abide by the will of the majority in an organization to which they both *voluntarily* belong, but it is quite another thing for the majority to compel the minority to become a part of it.

"3. The closed shop represses initiative, eliminates the incentive to excel, and tends to force all workers into a mold of mediocrity. Further extension of the closed shop will result in an America of fixed classes

by making it impossible for the ambitious workers to forge ahead.

"4. The closed shop hinders productive efficiency. The primary concern of union leaders is not to increase production but rather to keep the greatest number of dues-paying members employed at the highest possible wages. To do this they have resorted to 'spread the work' and other restrictive measures. Thus, costs are increased and the consumer is made to suffer.

"5. The closed shop prevents efficient selection of workers. Workers are hired and promoted not according to their ability but according to their loyalty to union policies and their blind adherence to the dictates of union officers.

"6. The closed shop makes efficient management impossible. It gives union leaders veto power over management, although the union has no responsibility for the success of the business.

"7. The closed shop is used to enforce a monopoly of the labor supply. Membership in the unions is restricted by unreasonable initiation fees or by arbitrary refusal to take in new members. Thus a small group of union members profit while the rest are unable to find jobs.

"8. The closed shop vests dictatorial powers in union leaders. The union member is denied the right to protest against union policies by resigning. The closed shop is closed against effective protests from the very membership which supports it. Union officers who are made invulnerable by a closed shop forget the needs of the members while feathering their own nests.

"9. The closed shop places in the hands of the union powers of compulsion which rightly belong only to the state. It is no more just to require all workers to join the union and pay dues than it is to require every beneficiary of Christian civilization to join the church and pay the tithe.

"10. If unions have done as much to improve the condition of the worker as they claim, then it is surprising that all workers do not voluntarily flock into the union fold. Unions should be willing to win membership through proving their worth to the individual instead of depending upon the compulsion of the closed shop.

* * * * *

"12. Unions in England and Scandinavia and the railroad brotherhoods in America have gained large membership through proving their worth and responsibility, and without resorting to the compulsion of the closed shop. Other unions should follow their example.

* * * * *

"18. The presence of the closed shop after the war will prevent returning soldiers and sailors from obtaining employment. It will aggravate post-war economic conditions by making it difficult to start new industries, to reach new markets, to sell at fair prices, and to compete in world markets.

"19. The closed shop is often unpopular with the union members themselves. Union leaders in many cases have demanded that an employer sign a closed shop contract when the rank and file knew nothing about it and had not authorized the leaders to sign such a contract. Even when the leaders have been able to persuade their members to favor a closed shop or maintenance of membership contract, the members soon tire of being compelled to retain their member-

ship and would like to resign if they could do so without losing their jobs.

* * * * * *

"21. Union leaders are free to manipulate vast sums of money collected from unwilling as well as willing workers with no legal requirement to account for receipts and expenditures. Dangerous political influence is wielded through their power to make campaign contributions as they please, without the consent of the membership."

The primary object of the North Carolina right-to-work statute is to guarantee to the individual worker in North Carolina that his right to work for a living in the common occupation of the community will be protected from both labor union officials and employers who would deprive him of that right either because he is, or is not, a member of a labor union. The closed shop denies that right unless the worker submits to the absolute control of a private organization—the labor union—over the terms and conditions of his employment. He must also submit to the control of that private organization as to whether he shall remain employed, or whether he shall go on strike and be unemployed in order to execute union policy over which he has no individual control. Certainly, such an institution is a violation of what "the common-law has long recognized as part of the boasted liberty of citizens", viz: "The right of every man to freely engage in such lawful business or occupation as he himself may choose, free from hindrance or obstruction by his fellow men, saving such as may result from the exercise of equal or superior rights on their part." BRENNAN v. UNITED HATTERS, 73 N. J. Law 729, 742, 65 Atl. 165; CONNORS v. CONNOLLY (Conn.), 86 Atl. 600, 604.

It has long been settled by this Court that the right of individual human beings to work unmolested and unfettered, is a right which is protected by the Fourteenth Amendment to the Constitution. In ALLGEYER v. STATE OF LOUISIANA, 165, U. S. 578, 17 S. Ct. 427, decided in 1896, Mr. Justice Peckham said:

> "The liberty mentioned in that amendment means, not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned."

That the inalienable right to work for a living—to follow any of the ordinary callings of life—is a right which is protected by the Fourteenth Amendment has been reaffirmed many times since the ALLGEYER case. Consider this Court's utterances in MEYER v. NEBRASKA, 262 U. S. 390, 43 S. Ct. 625; BUTCHERS' UNION COMPANY v. CRESCENT CITY COMPANY, 111 U. S. 746, 4 S. Ct. 652; COPPAGE v. KANSAS, 236 U. S. 1, 35 S. Ct. 240, 248; TRUAX v. RAICH, 239 U. S. 33, 36 S. Ct. 7; NEW STATE ICE COMPANY v. LIEBMANN, 285 U. S. 262, 52 S. Ct. 371; BARBIER v. CONNOLLY, 113 U. S. 27, 5 S. Ct. 357; YICK WO v. HOPKINS, 118 U. S. 356, 6 S. Ct. 1064.

In MEYER v. NEBRASKA, *supra*, at 399.

"'While this Court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merey freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.'"

In BUTCHERS' UNION CO. v. CRESCENT CITY CO., *supra*, at 762:

"'The right to follow any of the common occupations of life is an inalienable right; it was formulated as such under the phrase "pursuit of happiness" in the declaration of independence, which commenced with the fundamental proposition that "all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness." . . . I hold that the liberty of pursuit—the right to follow any of the ordinary callings of life—is one of the privileges of a citizen of the United States.'"

In COPPAGE v. KANSAS, *supra*, at 14:

"'Included in the right of personal liberty and the right of private property—partaking of the nature of each—is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty

in the long-established constitutional sense. The right is as essential to the laborer as to the capitalist, to the poor as to the rich; for the vast majority of persons have no other honest way to begin to acquire property, save by working for money.' "

In TRUAX v. RAICH, *supra*, at 41:

" 'It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the Amendment to secure.' "

In NEW STATE ICE CO. v. LIEBMANN, *supra*, at 278:

" 'Under that amendment, nothing is more clearly settled than that it is beyond the power of a state, "under the guise of protecting the public, arbitrarily (to) interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them".' "

In BARBIER v. CONNOLLY, *supra*, at 31:

" 'The fourteenth amendment . . . undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness, and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, and the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of any one, except as applied to the

same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition.' "

In YICK WO v. HOPKINS, *supra*, at 370:

" 'For the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself.' "

That the right to work is one of the essential freedoms of man without which citizenship would be but an empty name, and that the closed shop is a gross infringement of that right within the meaning of this Court in the foregoing quotations, has been recognized in many quarters. Consider these illustrations of abuse in regard to union-membership requirements where the closed union and the closed shop exist:

"On January 14th, 1942, President Roosevelt transmitted to Congress a report submitted to him by the National Resources and Planning Board. The president's letter of transmittal referred to the report as outlining 'some of our major objectives in planning to win the peace.' The report, amplifying the Roosevelt-Churchill Atlantic Charter, recited nine freedoms, mentioning first 'The right to work, usefully and creatively through the productive years.'

"The enjoyment of this right can hardly be secured unless, among other changes in our social and economic structure, some control be effected over membership requirements of labor unions. The initiation fee

of apprentices in a New Jersey union was increased over a short period of time from five hundred dollars to three thousand dollars. Union rules setting forth grounds of expulsion have included the commission of any 'disreputable' act or any act bringing 'reproach' or 'discredit' on the union; conduct unbecoming a union member; drunkenness; 'wrongfully' condemning any decision rendered by any officer of the organization; a member's deserting his family 'without good cause,' and using an unapproved circular. Least dramatic but most final of all grounds of expulsion, because less open to disputes of fact, is that of non-payment of dues. It has been held that the decision of the executive board of the union as to the breach of the rules is final, even though it was erroneous in fact." THE CLOSED UNION AND THE RIGHT TO WORK by Ralph Newman.

Consider also the report of the Senate Committee on Labor and Public Welfare after holding hearings on the closed shop prohibitions of the Federal Labor Management Relations Act of 1947:

"Until the beginning of the war only a relatively small minority of employees (less than 20%) were affected by contracts containing any compulsory features. According to the Secretary of Labor, however, within the last 5 years over 75 percent now contain some form of compulsion. But with this trend, abuses of compulsory membership have become so numerous there has been great public feeling against such arrangements. . . . We have felt that on the record before us the abuses of the (closed shop) system have become too serious and numerous to justify permitting present law to remain unchanged. *It is clear that the closed shop which requires preexisting union membership as a condition of obtaining employment creates too great a barrier to free employment to be*

longer tolerated. In the maritime industry and to a large extent in the construction industry union hiring halls now provide the only method of securing employment. This not only permits unions holding such monopolies over jobs to exact excessive fees but it deprives management of any real choice of the men it hires. Extension of this principle to licensed deck and engine officers has created the greatest problems in connection with the safety of American vessels at sea. (See testimony of Almon E. Roth, id., vol. 2, p. 612.)

"Numerous examples were presented to the committee of the way union leaders have used closed-shop devices as a method of depriving employees of their jobs, and in some cases a means of securing a livelihood in their trade or calling, for purely capricious reasons. In one instance a union member was subpoenaed to appear in court, having witnessed an assault upon his foreman by a fellow employee. Because he told the truth upon the witness stand, the union leadership brought about his expulsion with a consequent loss of his job since his employer was subject to a closed-shop contract. (See testimony of William L. McGrath, id., vol. 4., p. 1982.)

"Numerous examples of equally glaring disregard for the rights of minority members of unions are contained in the exhibits received in evidence by the committee. (See testimony of Cecil B. DeMille, id., vol. 2, p. 797; see also, id., vol. 4, pp. 2063-2071). If trade-unions were purely fraternal or social organizations, such instances would not be a matter of congressional concern, but since membership in such organizations in many trades or callings is essential to earning a living, Congress cannot ignore the existence of such power." (Emphasis supplied). SENATE REPORT NO. 105, 80th Congress, First Session, pp. 6 and 7.

The Congress of the United States then went on to prohibit the narrowly defined closed shop and to permit a union shop only when subject to certain conditions laid down in the Labor Management Relations Act (Section 7 and Section 8, subsection 3). At the same time, the Congress made it clear that "the bill does nothing to facilitate closed shop agreements or to make them legal in any State where they may be illegal." SENATE REPORT NO. 105, 80th Congress, First Session, p. 6; FEDERAL LABOR MANAGEMENT RELATIONS ACT of 1947, Section 13, subsection (b). North Carolina, in enacting its right-to-work legislation, was but utilizing the power left it by the Congress to protect those individual rights already sanctioned by this Court. The purpose of the North Carolina law is concisely declared in the caption of the act, where it is said:

> "AN ACT TO PROTECT THE RIGHT TO WORK AND TO DECLARE THE PUBLIC POLICY OF NORTH CAROLINA WITH RESPECT TO MEMBERSHIP OR NON-MEMBERSHIP IN LABOR ORGANIZATIONS AS AFFECTING THE RIGHT TO WORK . . . "

And again in Section 1 of the Act, where it is stated:

> *"The right to live includes the right to work. The exercise of the right to work must be protected and maintained free from undue restraints and coercion. It is hereby declared to be the public policy of North Carolina that the right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization."* (Emphasis supplied.)

The record in this case (No. 34) shows by the evidence that the Building and Construction Trades Council of Asheville undoubtedly had control over the construction business in that community, and certainly they had control over the construction business of the employer (Whitaker) who signed the agreement, whichever way the word "enterprise", as used in the statute, may be interpreted. In other words, this Building Council had a monopoly over labor power for construction purposes. We are aware of the fact that one of the witnesses testified that no labor organization within the State possessed any monopoly in the supply of labor in any city, county or area of the State by reason of any union security agreement, but this was a mere conclusion of the witness. The verdict of the jury has established and foreclosed any inquiry into the facts as this Court does not pass upon the weight of the evidence. The State had a right to declare what acts should or should not constitute a crime.

THE ARGUMENT OF REGULATION OF TRADE UNIONS INSTEAD OF THE PROHIBITION OF THE CLOSED SHOP

The General Assembly, in enacting the "Right-to-Work" Act, treated the denial of a person to work, because of membership or non-membership in a labor union, as an *abuse* contrary to the public interest. It reached the legislative conclusion that denying a person the right to work because of membership or non-membership in a union was unfair and against the public interest. It was the legislative conclusion that the closed or union shop was the *abuse* itself. Obviously an *abuse* cannot be destroyed by preserving it. The law enacted was dealing with the right of men to work. *No* man anywhere has been prohibited from work-

ing; and, on the contrary, the purpose of the Act is to open the doors of employment so that instead of confinement of the right to work, it is made available to all.

Congress, in enacting the Taft-Hartley Bill, placed a complete prohibition on the closed shop—as it had a right to do. It permitted the union shop only on certain defined conditions. It could have likewise absolutely prohibited the union shop rather than permitting it under the control of provisions designed to curtail the evil practices which had become so much associated with it.

The union security provisions of employment contracts are for the main purpose of keeping other people from getting jobs with the employer. Leaving this provision out does not in any manner keep the members of a union from securing jobs with an employer and continuing to work for the employer so long as it is mutually satisfactory to do so.

The question involved is not in any sense preventing a person who works to make a contract for his employment, but it prevents the contract being made for his employment *which keeps some other person from having a right to work for the employer.*

Thus, the closed shop or union shop which is prohibited by the North Carolina statute does have a wide public interest in this State by permitting 92%, or more, of the industrial workers of this State who are not under closed shop a better opportunity for a job and preventing monopoly in favor of the members of a union which secures the union security contract.

The appellants' entire argument sums up to an admission that the State has a right to regulate but not to prohibit a practice which is found to be contrary to the public interest. *An abuse does not have to be regulated.* An abuse

can be cut out by the roots and destroyed at its source, as has been held in many cases of a similar character dealing with employer-employee relations.

The Railway Labor Act, hereinbefore referred to, did not attempt to regulate the use of the closed shop contract with railway employees and employers, but provided an absolute prohibition of this practice; and this Act has been held to be in all respects constitutional. SHIELDS v. UTAH IDAHO CENT. R. CO., Utah 1938, 59 S. Ct. 160, 305 U. S. 177, 83 L. ed. 111; VIRGINIA RY. CO. v. SYSTEM FEDERATION NO. 40, Va. 1937, 57 S. Ct. 592, 300 U. S. 515, 81 L. ed. 789. See other cases cited, Note 1 to Title 45, Section 151, U.S.C.A.

According to the appellants' theory, this type of legislation would have been unconstitutional in providing an absolute prohibition against the union or closed shop.

Likewise, in numerous other cases, the Supreme Court of the United States has upheld as constitutional direct prohibitions against abuses affecting the public interest in labor relations. This Court has sustained laws prohibiting employment in excess of eight hours a day in underground mines and smelters; requiring redemption in cash of store orders issued in payment of wages; forbidding the payment of seamen's wages in advance; making it unlawful to contract to pay miners employed at quantity rates upon the basis of screened coal instead of the weight of the coal as originally produced in the mines; prohibiting contracts limiting liability for injuries to employees; limiting the hours of work for employees in manufacturing establishments; prohibiting the blacklisting of employees; prohibiting the intimidation of employees, and many other similar enactments, as shown in cases already cited in this brief.

In addition to these instances in which prohibitory

legislation has been upheld as distinguished from legislation regulating "evils" or "abuses", in the following cases, direct prohibitions instead of regulations were upheld when enacted by State laws under its police power:

1. Manufacture and sale of oleomargarine. POWELL v. PA., 127 U. S. 678, 8 S. Ct. 992, 12 L. ed. 447.

2. Selling cigarettes. AUSTIN v. TENN., 179 U. S. 343, 21 S. Ct. 132.

3. Selling stocks on margin. OTIS v. PARKER, 187 U. S. 606, 23 S. Ct. 168.

4. Keeping billiard halls. MURPHY v. CALIF., 225 U. S. 623, 32 S. Ct. 697.

5. Selling trading stamps. RAST v. VAN DEMAN & LEWIS CO., 240 U. S. 342, 36 S. Ct. 370.

In connection with these cases, Justice Brandeis, in his dissenting opinion in ADAMS v. TANNER, 244 U. S. 590, 37 S. Ct. 662, cited by appellants, states that these cases show that the scope of the police power is not limited to regulation as distinguished from prohibition, and that they show that the power of the State exists equally whether the end sought to be attained is the promotion of health, safety or morals, or is the prevention of fraud and the prevention of general demoralization, and quotes as follows:

> " 'If the state thinks that an admitted evil cannot be prevented except by prohibiting a calling or transaction not in itself necessarily objectionable, the courts cannot interfere unless in looking at the matter they can see that it is an equally unmistakable in-

fringement of the rights secured by fundamental law.'" Citing OTIS v. PARKER, 186 U. S. 606; BOOTH v. ILLINOIS, 184 U. S. 425.

The dissenting opinion of Justice Brandeis in ADAMS v. TANNER was joined in by Justices McKenna, Holmes and Clark and represents the prevailing opinion of the present Supreme Court.

In none of these cases was the legislation framed to attempt to correct these abuses by providing conditions under which they could continue, as is here suggested, but the abuses themselves were cut out by the roots by direct prohibitions.

Had the Legislature attempted to prohibit the making of contracts of employment between employers and employees, the argument which the appellants advance would have some application. That is the fundamental right of a person—to employ and to be employed. The varying conditions of employment and types of contract which might be made which would restrict the right of others to be employed and affected with a vital public interest, are subject to the police power of the State.

No case which is cited by the appellants in any way contradicts the position above set out.

TREIGLE v. ACME HOMESTEAD ASSOC., 297 U. S. 189, 56 S. Ct. 408, held unconstitutional a state statute which prevented a stockholder in a building and loan association, in violation of his contract, from withdrawing his shares of stock as provided in the contract. This case was decided under the contract provisions of the Federal Constitution with no relationship whatever to the question here discussed.

The case of HOUSE v. MAYS, 219 U. S. 270, 31 S. Ct.

234, cited by appellants, upheld the validity of a Missouri statute which prohibited arbitrary deductions from actual weight or measure under customs of rules of boards of trade. This statute did not attempt to regulate this evil or abuse but absolutely prohibited it.

In BOOTH v. ILLINOIS, 184 U. S. 425, 22 S. Ct. 425, an Illinois statute which prohibited all dealings in futures in the selling of grain was held constitutional under the police power of the State. The Illinois Act did not attempt to regulate dealings in futures in grain but provided an absolute prohibition.

In MUGLER v. KANSAS, 123 U. S. 623, 8 S. Ct. 273, the constitutionality of a statute enacted by Kansas absolutely prohibiting the manufacture and sale of spirituous liquors was sustained as constitutional under the police power of the State.

The Railway Labor Act, Title 45, U.S.C.A., in Section 152 (fourth), prohibits the check-off by carriers. This statute provides as follows:

> "No carrier * * shall * * deduct from wages of the employees dues, fees, assessments, or other contributions payable to labor organizations, or * * collect or * * assist in the collection of any such dues, fees, assessments or other contributions."

This provision was attacked and its constitutionality upheld in the case of BROTHERHOOD OF R. R. SHOP CRAFTS v. LOWDEN, 86 Fed. (2d) 458, 10 A.L.R. 1128 (10th C. C. A.).

Certiorari in this case was denied, 300 U. S. 659, 81 L. ed. 863.

In enacting Chapter 328 of the Session Laws of 1947, the General Assembly of North Carolina had to consider grave

problems of national concern which had arisen in connection with the labor movement in the United States, which problems were by no means nonexistent in this State which in recent years has grown to be an industrialized community. According to the Bureau of Census figures, the value of manufactured products in North Carolina in 1945 amounted to $2,361,756,000, this figure not including the value of mineral or agricultural products. According to the estimates of the North Carolina Department of Labor, there were employed in manufacturing industries in North Carolina in May, 1947, 366,000 persons, and in nonagricultural pursuits, 728,000.

These figures clearly demonstrate that North Carolina, as an industrial State, had to solve the labor problem and was confronted with it here as well in other jurisdictions. The wave of strikes which swept the United States just prior to the enactment of the 1947 Act were felt in North Carolina, although not as seriously as in other places. The consumers of coal in North Carolina felt the effect of the strike, one phase of which was dealt with by this Court as recited in the contempt proceedings in the case of UNITED STATES v. JOHN L. LEWIS and the UNITED MINE WORKERS OF AMERICA, 330 U. S. 258, 67 S. Ct. 677, in the same manner that the conditions therein referred to were felt in other States, and this aroused the same degree of public resentment here as elsewhere.

There can be little doubt but that the epidemic of labor strikes in American essential national industries in the war period aroused public opinion in North Carolina and made its contribution to the enactment of the North Carolina Act.

The following quotation is of interest:

"On November 20, 1941, less than a month before Pearl Harbor, American defense production was threatened with chaos. Approximately 150,000 members of the United Mine Workers Union were out on strike. Interruptions in the mining of coal during September, October and November had so curtailed the coal supply that defense plants in many parts of the country were threatened with the possibility of having to quit work on government orders. The National Defense Mediation Board, whose job it was to keep defense disputes at a minimum, had been unable to settle the miners' strike and had fallen to pieces as a result of the struggle.

"This dangerous interruption in the preparation of America for War had been caused by a dispute over a single issue—union security. This was the same issue which had halted construction of warships at the Federal Shipbuilding and Drydock Company, had caused a prolonged strike at Allis-Chalmers Manufacturing Company, almost broke up the President's Industry-Labor Conference, resulted in Government confiscation of the S. A. Woods Machine Company, and threatened to destroy the War Labor Board just as it had destroyed the National Defense Mediation Board. Under both boards the issue which aroused most public controversy and which gave government mediators the most headaches was the question of whether or not unions should be given security by granting them the all-union shop or some modification thereof." THE CLOSED SHOP ISSUE IN WORLD WAR II, T. T. Hammond, 21 N. C. L. Rev. 127.

In adopting the Right-to-Work Act, the General Assembly of 1947 followed the same course which was adopted in fifteen other States.

In four States closed shop agreements are now prohibited

by a vote of the people amending the respective State Constitutions.

Arizona, amendment adopted election November 1948.
Arkansas, amendment adopted election December 1944.
Florida, amendment adopted election November 1944.
Nebraska, amendment adopted election November 1946.

In New Mexico the Legislature (H. J. Res. 15, Laws 1947) has approved and referred to the people for their approval a proposal to amend the Constitution of New Mexico to prohibit closed-shop agreements.

In eleven States closed-shop agreements are prohibited by legislative enactment:

Delaware, H. B. 212, Laws 1947.
Georgia, Act. No. 140, Laws 1947.
Louisiana, Dart's Gen. Stat., Sec. 4381[illegible]2.
Maryland, Ann. Code 1939, Art. 100, Sec. 65.
North Carolina, Chapter 328, Session Laws 1947.
North Dakota, H. B. 151, Laws 1947.
South Dakota, Ch. 80, Laws 1945 (Con. Amend. 1947).
Tennessee, S. B. 367, Laws 1947.
Texas, H. B. 27, Laws 1947.
Virginia, Ch. 2, Laws 1947.
Iowa, S. B. 109, Laws 1947.

Including the action taken theretofore by other States, a total of some twenty-three States have taken action to ban or regulate union security agreements. Ala. Code, tit. 26, Sec. 383 (Supp. 1943); Colo. Stats. Ann., Ch. 97, Sec. 94(6)(1)(e) (Supp. 1946); Fla. Const., Decl. Rights Sec. 12; Kan. Gen. Stat. Sec. 44-809(4) (Supp. 1945); La. Gen. Stat., Sec. 4379.6 (1939); Md. Ann. Code, Art. 100, Sec. 65 (1939); Wis. Stat., Sec. 111.06 (1)(c) (1945).

The total population of the twenty-three States which have adopted this legislation represents a substantial proportion of the total population of the United States. The action of these twenty-three States, in addition to the action taken by Congress in adoption of the Taft-Hartley Act, is such a clear demonstration of the fact that the Legislature of North Carolina was dealing with a real economic problem in enacting its Right-to-Work statute, that we need not further labor the point.

IV.

THE STATUTE DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.

As to the equal protection of the law clause of the Fourteenth Amendment, as pointed out in the opinion of the Supreme Court of North Carolina in this case (228 N. C. 352, 368; 45 S. E. (2d) 860), the employer-employee relationship has long been recognized as constitutional justification for legislation applicable to persons in that relative status. The North Carolina statute applies equally and alike to all employers and to all employees who are situated in like circumstances and conditions. Section 4 of the North Carolina statute, which the appellants do not contest, specifically prohibits any employer to require an employee to abstain or refrain from membership in any labor union or labor organization as a condition of employment or continuation of employment. The fact that non-union employees may indirectly benefit from the activities of union employees does not render the statute dis-

criminatory. The Act is equally applicable to all employers and employees within the State.

Barbier v. Connolly, 113 U. S. 27, 5 S. Ct. 357
Hayes v. Missouri, 120 U. S. 68, 7 S. Ct. 350

CONCLUSION

The simple truth that emerges out of this whole conflict between employer and unions is: the leaders of trade unions wish to organize the whole nation on the closed shop basis. They do not wish to do this by convincing the individual workingman that the union has benefits to offer and that it is to his interest to voluntarily join such an organization. What the leaders of trade unions really want to do is to unionize the nation by taking a short cut, the easy way, the use of compulsory and dictatorial power to create all-inclusive unionism by force. To justify this use of force, the doctrine of necessity and indispensability is invoked; and it is sought to cover any method or technique for the maintenance of union organization with the cloak of constitutional protection. By this method or rationalization, a contract which is constitutionally subject to reasonable modification and regulation is converted into action taken by an assembly, which is in turn protected by the First Amendment; and thus, a contract establishing a closed shop joins the ranks of fundamental rights which "depend on the outcome of no elections." This method of using power to organize is commented upon in an article entitled: "The Open Shop and Industrial Liberty" by Walter Gordon Merritt (The League for Industrial Rights, New York City), as follows:

> "The issue, therefore, before this country, is not the question of a partial Closed Shop or a voluntary Closed

Shop system, but a national Closed Shop system maintained by conscription, which, like some colossal reaper, would mow down the rights of others. It means closing the doors of industry to all but union men and closing transportation and the markets of the nation to all but union goods. It means that the great consuming public, deprived of its right of commercial suffrage, must starve or buy its sustenance and raiment from a self-sustained monopoly, artificially protected from the forces of moral or legal restraint. It means the substantial abandonment of the rights and liberties of non-union men and all nonconformists and dissenters, and the vesting in a private society of the power of commercial life and death over their fellow beings. * * * No state can tell a workman when and where he shall work or not work. That is involuntary servitude and a condition against which he is protected by the Constitution of the United States. By what warrant, then, can we place such power in the hands of private societies which deny the right of law or government to review their affairs or to define their duties and obligations? By what token of human nature can people believe that such unlimited power over the lives of individuals will be exercised by those organizations with moderation and restraint? The entire course of human history is to the contrary, and the short history of American Unionism does not modify the record."

The record of the Railway Brotherhoods clearly shows that unionism can be accomplished on a voluntary basis. These organizations were well established and their benefits so apparent that they had no need for a closed shop contract; and this existed before their status was protected by the Railway Labor Act. There is, of course, a difference between cooperative collectivism and coercive collectivism. Appellants appear to prefer the latter, and their doctrine

of necessity and indispensability would certainly have a familiar ring to the adherents of dialectical materialism. Appellants apparently do not prefer to use the Socratic method and "sell" trade unionism to working people on a voluntary basis and by persuasion and argument. This is pointed out by Stewart and Cowper in their pamphlet entitled "Maintenance of Union Membership" (Industrial Relations Counselors, New York) where it is said:

> "Apparently American labor unions have not yet learned that in the long run any system of labor organization or business enterprise will survive and progress only as it performs a public service, that when unions render acceptable service to workers they will not have to rely on monopolistic practices to secure and retain members."

To follow the democratic method, of course, means that appellants must try to convince men, use hard work and intelligence so that unions will, in the end, sell themselves to workingmen. The conflict should not be settled by force excited in economic warfare, but it should be settled by democratized unions in the battleground of the human mind.

We return, however, to our major premise. The question as to whether or not the legislation adopted by the General Assembly of North Carolina enacting Chapter 328 of the Session Laws of 1947, was or was not wise, under all of the decisions of this Court and all other Courts of this country, when supported by any reason at all, was entirely a matter for the Legislature of this State to decide and not subject to any judicial review. That there were many reasons for such legislation in this and other states as well as in the enactment by Congress of the Taft-Hartley Act

is self-evident, and the conclusion cannot be avoided that the North Carolina statute was a valid exercise of the reserve power of the State under the Tenth Amendment to the Constitution of the United States:

> "The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states, respectively, or to the people."

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